

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: August 11, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

August 11, 2020 at 1:00 p.m.

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1. [19-91012](#)-B-13 KATHLEEN MILBURN CONTINUED MOTION TO CONFIRM
[RDR-6](#) Robert D. Rodriguez PLAN
7-10-20 [[128](#)]

Final Ruling

This matter was continued from August 4, 2020. Opposition was filed by the Chapter 13 Trustee on July 21, 2020. A response was untimely filed by the Debtor on July 31, 2020, based on the court's order continuing the hearing. See dkt. 144.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not confirm the third amended plan.

First, the Debtor does not appear to be able to make plan payments pursuant to 11 U.S.C. § 1325(a)(6). Although the Debtor has filed an amended Schedule J to reflect an additional expense of \$350.00 toward mortgage payments for her residence, her monthly net income is now \$2,427.43. This is less than the proposed monthly plan payment of \$2,430.44. The Debtor therefore appears to be unable to make her monthly plan payment.

Second, Debtor's plan provides for United Party Rentals as a Class 2 claim. This creditor filed Claim No. 6 on July 20, 2020. The deadline to file a proof of claim for a creditor that is not a governmental unit was April 17, 2020. Dkt. 52. Therefore, it appears that this proof of claim was untimely filed; however, no objection to claim has been filed by any interested party.

Nonetheless, for the first reason stated above, the plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

Furthermore, the Trustee may submit an order dismissing the case without further notice. See dkts. 88, 144.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

August 11, 2020 at 1:00 p.m.

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2. [19-90915](#)-B-13 ANA RAYA
[MJH](#)-2 Mark J. Hannon

MOTION TO CONFIRM PLAN
7-1-20 [[46](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

3. [19-90421](#)-B-13 NARCISSA THOMAS
[GLF](#)-6 Jessica R. Galletta
Thru #4

CONTINUED MOTION TO MODIFY PLAN
5-19-20 [[122](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee. A response was filed by the Debtor.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not confirm the modified plan.

First, the Trustee objects to confirmation on grounds that the Debtor failed to make a July 2020 plan payment. Debtor filed a response stating that she tendered a payment of \$3,200.00 to the Trustee on July 31, 2020.

Second, the Debtor's plan is not her best efforts under 11 U.S.C. § 1325(b). Debtor's repayment of a payroll advance and payday loan ends in July 2020 and August 2020, respectively, but the Debtor's plan fails to increase plan payments when these loans are paid in full.

Third, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's plan proposes increasing plan payments to \$5,300.00 for 43 months. Dkt. 126, p. 8. However, Debtor's reply states that plan payments will be increased to \$5,461.00 for 43 months. Dkt. 136, p. 6. And then Debtor's supplemental reply states that plan payments will be increased to \$5,650 for 44 months. Dkt. 150, p. 2. On August 4, 2020, Debtor filed amended Schedules I and J showing that her net income is \$3,610.85 but this is insufficient to cover any of her proposed plan payments for months 43 or onward.

Most problematic is the numerous changes Debtor attempts to make in her reply and supplemental reply to make her plan confirmable when the most reasonable course of action would be to file a new modified plan. This court does not permit Debtors to correct a defective plan, or make substantial changes to plan terms, in a confirmation order.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4. [19-90421](#)-B-13 NARCISSA THOMAS
[GLF-7](#) Jessica R. Galletta

CONTINUED MOTION FOR
RETROACTIVE APPROVAL OF
POST-PETITION DEBT
6-23-20 [[130](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee. A response was filed by the Debtor.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to deny without prejudice the request for retroactive approval of post-petition debt.

Debtor requests retroactive approval of post-petition debt in the total amount of \$4,750.00 taken as a pay advance from her employer Calpath Medical Associates and \$1,800.00 taken as an unsecured loan from Niswi, LLC d/b/a LenduMo. The Calpath loan is repaid in the amount of \$475.00 per pay period until paid in full and there are no fees or interest associated with this loan. The Niswi, LLC loan is repaid in the amount of \$438.21 every two weeks until September 2020 when the loan is paid in full.

These loans were incurred by the Debtor without prior court approval to pay toward her default in plan payments totaling \$14,505.00 and prevent the dismissal of her case as requested by the Chapter 13 Trustee on March 4, 2020. Debtor's delinquency was due to paying approximately \$5,250.00 in vehicle repairs and \$1,200.00 for a car rental after Debtor's two vehicles were involved in car accidents and which Debtor sustained injuries. Debtor had consulted with a personal injury attorney but failed to notify her bankruptcy counsel, the Trustee, or the court of the car accident and the reduced income as a result of it.

On March 31, 2020, Debtor tendered \$13,000.00 to the Trustee toward the default in plan payments. Since then, Debtor paid \$1,270.00 on May 19, 2020, and \$2,800.00 on May 27, 2020. In total, Debtor has paid \$50,915.00 into this Chapter 13 plan.

Opposition

The Trustee opposes Debtor's motion on grounds that the necessity of incurring \$1,200.00 for a rental car is questionable. Specifically, Trustee states that based on Debtor's schedules that the Debtor should have at least one operable car and did not need to incur additional debt to rent a car.

The Debtor filed a reply stating that the vehicles listed in her schedules were not available to her after her car accident.

Discussion

The factors a court typically considers in determining whether to grant retroactive postpetition financing are described in *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 523 (9th Cir. 2007), 11 U.S.C. § 364(c)(2). These factors are as follows: (1) whether the financing transaction benefits the bankruptcy estate; (2) whether the moving party has adequately explained its failure to seek prior authorization or otherwise established that it acted in good faith when it failed to seek prior authorization; (3)

whether there is full compliance with the requirements of section [363(b)]; and (4) whether the circumstances of the case present one of those rare situations in which retroactive authorization is appropriate. *Id.* However, very recently in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S. Ct. 696, 700-01 (2020), the United States Supreme Court severely curtailed the authority of federal courts to issue orders granting retroactive relief.

In light of *Acevedo*, the court will deny the Debtor's motion without prejudice. Any re-filed motion shall discuss *Acevedo's* applicability, if at all, including any impact that *Acevedo* may have on *Harbin*.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

5. [15-90977](#)-B-13 EDWARD/WENDEE STOCKLIN MOTION TO MODIFY PLAN
[MDA-2](#) Mary D. Anderson 7-6-20 [[71](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtors do not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$15,427.00, which represents approximately 1 plan payment due June 2020. The Debtors not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors' plan fails to provide for post-petition arrears totaling \$3,047.82 for the month of June 2020 to Class 1 creditor Select Portfolio Services.

Fourth, Debtors have failed to file supplemental Schedules I and/or J to support a plan payment of \$4,612.00 as stated in Section 7.01 of the plan. But even so, this proposed plan payment for months 57 through 72 is insufficient to cover monthly payments owed to secured creditors. These monthly amounts plus Trustees fees and expenses total \$5,173.46 per month.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

6. [19-90897](#)-B-13 KATHLEEN ROWE-GLENDON
[PLG-1](#) Steven A. Alpert

MOTION TO MODIFY PLAN
7-6-20 [[20](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.