

**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 15, 2023

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 15, 2023 at 1:00 p.m.

1. [22-90223](#)-B-13 ALEO PONTILLO MOTION TO CONFIRM PLAN
[DCJ-3](#) David C. Johnston 6-30-23 [[75](#)]
Thru #2

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 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). Opposition was filed.

The court has 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). This matter will therefore be decided on the papers.

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

Feasibility depends on the granting of a motion to avoid lien of Michael R. Esparza. That motion was granted at Item #2, DCJ-4.

However, as noted in creditor Michael R. Esparza's objection to confirmation, the proposed plan fails to properly account for his claim. Creditor's avoided judicial lien does not appear as an unsecured debt in Debtor's proposed plan. The court notes, however, that the creditor has not filed a proof of claim, the deadline for which has already passed.¹ Neither has the creditor provided any evidence to support its claimed amount of \$750,000.00, and not \$563,329.00 as listed in Schedule D or \$374,500.00 as listed in the default judgment recorded in Stanislaus County, California, on March 11, 2015.

Nonetheless, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

¹Inasmuch as the motion to avoid lien at DCJ-4 (dkt. 86) is granted, Fed. R. Bankr. P. 3002(c)(3) may be applicable. See *In re Ketchum*, 2013 WL 3479652, *5 (Bankr. N.D. Ohio 2013) (Rule 3002(c)(3) is applicable to cases in which a lien that has attached to collateral is avoided as impairing an exemption under § 522(f), as a preference under § 547, or under § 544 where the lien is defective); see also *In re Ramsey*, 356 B.R. 217, 228 n.50 (Bankr. D. Kan. 2006) (Rule 3002(c)(3) deals with filing and allowance of unsecured claims resulting from avoidance actions).

August 15, 2023 at 1:00 p.m.

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2. [22-90223](#)-B-13 ALEO PONTILLO
[DCJ](#)-4 David C. Johnston

MOTION TO AVOID LIEN OF MICHAEL
R. ESPARZA
8-1-23 [[86](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is grant the motion to avoid lien of Michael R. Esparza.

This is a request for an order avoiding the judicial lien of Michael R. Esparza ("Creditor") against the Debtor's property commonly known as 1325 Yosemite Boulevard, Modesto, California ("Property").

A default judgment was entered against Debtor in favor of Creditor in the amount of \$374,500.00. An abstract of judgment was recorded with Stanislaus County on October 19, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$500,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$435,000.00 on Schedule C. All other liens recorded against the Property total \$159,120.00.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

3. [21-90434](#)-B-13 EDWARD BRUNNER AND
[EJV](#)-4 KATHERINA COGGINS
Eric J. Gravel

MOTION TO MODIFY PLAN
7-6-23 [[84](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed July 6, 2023, will be confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor/s 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.

4. [23-90241](#)-B-13 ROBERT MARTIN
[RAS](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY PHH MORTGAGE
CORPORATION
7-11-23 [[37](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

Creditor PHH Mortgage Corporation ("Creditor") holds a deed of trust against real property commonly known as 23240 Cresta Drive, Twain Harte, California, and objects to confirmation of the plan on various grounds. First, it is unclear how the Debtor intends to provide for Creditor's secured total claim given that there is no interest rate or monthly dividend listed in Class 2 of the plan. Second, Creditor has filed Proof of Claim 1-1 indicating that \$349,763.41 is due in full since Marion V. Martine, the sole borrower of the reverse mortgage note on the property, had passed away on November 4, 2021, and that the annual interest rate is 5.61%. Debtor has not filed any objection to claim. Third, the plan is not mathematically feasible since the Debtor's monthly net income of \$332.00 is insufficient to adequately provide for Creditor's total claim.

The plan filed June 28, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 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). Opposition was filed.

The court has 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). This matter will therefore be decided on the papers.

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

First, the Debtor has failed to submit year to date Profit and Loss Statements or file Amended Schedules I and J per the Trustee's prior oppositions. Further, Debtor has failed to submit any evidence with this motion explaining her failure to do so. Debtors' plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

Second, the Debtor has failed to file amended schedules to accurately reflect her current income of \$1,500.00 per month in rent from roommates and \$1,000.00 per month from renting two rooms at her salon. Without this information, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

Third, the attachment to Schedule I that provides for Debtor's business income and expenses needs to be filed. Without this information, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

Fourth, the Debtor has failed to provide a copy of her liability riders and workers' compensation riders, if applicable, for her business Appolo Pblow, Inc. dba Sandy Bottoms Tanning Salon. Without this information, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor has not provided a copy of her year-to-date profit and loss statement for her business Appolo Pblow, Inc. dba Sandy Bottoms Tanning Salon, to show Debtor has the ability to fund the plan. Without this information, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, 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. [22-90417](#)-B-13 RICARDO RAMIREZ RODRIGUEZ CONTINUED OBJECTION TO CLAIM OF
[RDG](#)-1 Mohammad M. Mokarram US DEPARTMENT OF VETERANS
AFFAIRS, CLAIM NUMBER 12-1
6-30-23 [[24](#)]

Final Ruling

This matter was continued from August 8, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, August 11, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 27, sustaining the objection to claim, shall become the court's final decision. The continued hearing on August 15, 2023, at 1:00 p.m. is vacated.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [21-90442](#)-B-13 THOMAS GILLIS
[TOG](#)-2 Pro Se

CONTINUED MOTION FOR HARDSHIP
DISCHARGE
7-17-23 [[108](#)]

Final Ruling

This matter was continued from August 8, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, August 11, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 125, granting the motion for hardship discharge, shall become the court's final decision. The continued hearing on August 15, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

8. [23-90251](#)-B-13 BENNY CHAVEZ
[RDG](#)-1 Simran Singh Hundal

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
7-13-23 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The objection has been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

This matter was continued to August 15, 2023, to allow the continued meeting of creditors to conclude. The continued meeting of creditors was held on August 9, 2023, Debtor appeared, and the meeting was concluded.

There being no other objection to confirmation, the plan filed June 14, 2023, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.