

**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: September 1, 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.

# Eastern District of California

**September 1, 2020 at 1:00 p.m.**

- The court will issue an order.

2. [18-90003](#)-B-13 MATTHEW/MELISSA DICKENS MOTION FOR RELIEF FROM  
[APN](#)-1 Mark S. Nelson AUTOMATIC STAY  
7-14-20 [[49](#)]

SPECIALIZED LOAN SERVICING  
LLC VS.

### **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.

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 to the 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 motion for relief from stay.

Specialized Loan Servicing ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1792 East J Street, Oakdale, California (the "Property"). Movant has provided the Declaration of Steven Ross to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Ross Declaration states that there are 3 post-petition payments in default totaling \$4,102.24. This represents months April 2020 through June 2020.

Debtors filed an opposition stating that they have cured the default and are now current on their mortgage payments. Debtors provide exhibits evidencing their payment history. Debtors state that they fell behind on mortgage payments after experiencing an unexpected medical and dental emergency in late-2019 followed by Joint Debtor's loss of employment due to COVID-19. As of August 3, 2020, Debtor has returned to work. Debtors state that they will be able to make timely monthly mortgage payments to Movant moving forward.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court determines that cause does not exist for terminating the automatic stay. Debtors have provided evidence that they are now current on mortgage payments and that their circumstances have changed from the time they fell behind on mortgage payments. Therefore, the motion is denied without prejudice.

No other or additional relief is granted by the court.

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

The court will issue an order.

3. [18-90806](#)-B-13 JULIANA PIERI-BELL  
[RK-1](#) Richard Kwun

MOTION TO MODIFY PLAN  
7-21-20 [[54](#)]

### **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.

4. [19-91007](#)-B-13 AMY LOPEZ  
[BJS](#)-2 Bradley J. Swingle

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF ARATA, SWINGLE,  
VAN EGMOND & HEITLINGER FOR  
BRADLEY J. SWINGLE, DEBTORS  
ATTORNEY(S)  
7-28-20 [[43](#)]

### **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 to grant the motion for compensation.

Bradley J. Swingle ("Applicant"), the attorney to Chapter 13 Debtor, requests the allowance of fees. This is Applicant's second motion for compensation after the court denied without prejudice the Applicant's first request on July 21, 2020, because Applicant did not file a separate notice and motion, and did not file an amended Rights and Responsibilities. Debtor's present motion resolves those issues.

The Debtor request \$4,000.00 in fees. Applicant states that \$500.00 was paid pre-petition to Debtor's prior attorney, who is now deceased, and that \$0.00 has been paid to Applicant or any attorney associated with his law firm. The balance of \$3,500.00 is to be paid through the plan pursuant to Local Bankr. R. 2016-1(c). An amended Rights and Responsibilities was filed by Applicant on July 24, 2020.

Although no task billing analysis has been filed by the Applicant, the work associated with confirmation of Debtor's plan was done by Applicant's law firm and the court issued an order confirming plan that supports the payment distribution requested by Applicant. See *dk*t. 30.

Applicant is allowed, and the Trustee is authorized to pay, \$3,500.00 through the plan to Applicant as compensation.

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

The court will issue an order.

5.     [20-90407](#)-B-13     VICTORIA GIBSON                     OBJECTION TO CONFIRMATION OF  
          [RDG](#)-1             Mark S. Nelson                     PLAN BY RUSSELL D. GREER,  
   CHAPTER 13 TRUSTEE  
   7-30-20 [[16](#)]

CONTINUED TO 9/08/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S  
MOTION TO VALUE COLLATERAL OF THE INTERNAL REVENUE SERVICE.

**Final Ruling**

No appearance at the hearing is required. The court will issue an order.

6. [20-90321](#)-B-13 MICHAEL/ALEXIS OKARMUS MOTION FOR RELIEF FROM  
[KMM](#)-1 Jessica A. Dorn AUTOMATIC STAY  
7-20-20 [[18](#)]  
NISSAN MOTOR ACCEPTANCE  
CORPORATION VS.

**Final Ruling**

Nissan Motor Acceptance's motion for relief from stay as to a vehicle 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). Debtors filed a non-opposition to the motion and state that the plan provides for its surrender.

The motion is therefore granted. The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

### **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.

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 to the 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 permit the requested modification and confirm the modified plan.

First, the Chapter 13 Trustee objects to confirmation on grounds that it cannot administer payments to Loancare LLC on a pro rata increase for the remaining 53 months of the plan. Debtor filed a response stating that plan payments will be \$192.02 for the first 7 months of the plan, then \$659.52 for months 8 through 16, and finally \$606.73 for month 17. Debtor states that the creditor will be paid in full upon month 17 of her 60-month plan.

Second, the Trustee states that the Debtor's motion is not plead with particularity pursuant to Fed. R. Civ. P. 7(b). Specifically, the Debtor does not explain why she is \$3,150.31 delinquent under the terms of the previously confirmed plan. The Trustee states that it is unable to discern if the cause of the delinquency has been rectified and if the Debtor will be able to make future plan payments. Debtor states in her declaration that she fell behind on plan payments in late-April 2020 due to her temporary decrease in income associated with the COVID-19 pandemic. Debtor contends that she is able to afford the proposed monthly payments in the modified plan because she has adjusted her household food expenses. Debtor filed an amended Schedule J on June 25, 2020, reflecting this adjustment.

Based on the above, the court finds that the modified 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/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.



8. [20-90342](#)-B-13 RUBEN ALVAREZ  
[PLG](#)-3 Rabin J. Pournazarian

MOTION TO CONFIRM PLAN  
7-15-20 [[37](#)]

**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.

**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.

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 to the 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, Debtor's plan is filed as an exhibit and not as a separate document as required by Local Bankr. R. 3015-1(d)(2).

Second, feasibility of the plan cannot be determined. The Debtor's supplemental Schedule J lists a car payment in the amount of \$295.00 per month for a new vehicle. However, no motion to incur debt was filed to support that payment. Until a motion to incur debt is filed and approved by the court, feasibility cannot be determined nor whether the Debtor is proposing to pay all her disposable income into the plan.

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.

**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 Debtors have 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 Debtors 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.

11. [19-90360](#)-B-13 JASON/DEBRA ELLIOT  
[JAD](#)-1 Jessica A. Dorn

MOTION TO MODIFY PLAN  
7-20-20 [[47](#)]

WITHDRAWN BY M.P.

**Final Ruling**

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

12. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED MOTION TO DISMISS  
[EGS](#)-3 Jessica A. Dorn CASE  
**Thru #13** 8-12-19 [[125](#)]

**Final Ruling**

This matter was continued from August 18, 2020. The parties filed a joint status report on August 25, 2020, as ordered by the court. Based on the parties' statements in the joint status report and given that an imminent loan modification has been circulated for signatures, the issues raised in the motion to dismiss and claim objection have changed substantially. Therefore, the motion to dismiss is denied without prejudice and the claim objection is overruled as moot.

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

The court will issue an order.

13. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUES STATUS CONFERENCE RE:  
[JAD](#)-5 Jessica A. Dorn OBJECTION TO CLAIM OF BAYVIEW  
LOAN SERVICING, LLC, CLAIM  
NUMBER 8  
2-16-18 [[62](#)]

**Final Ruling**

This matter was continued from August 18, 2020. The parties filed a joint status report on August 25, 2020, as ordered by the court. Based on the parties' statements in the joint status report and given that an imminent loan modification has been circulated for signatures, the issues raised in the motion to dismiss and claim objection have changed substantially. Therefore, the motion to dismiss is denied without prejudice and the claim objection is overruled as moot.

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

The court will issue an order.