

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: September 6, 2022

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
Sacramento, California

September 6, 2022 at 1:00 p.m.

- | | | |
|----|---|--|
| 1. | <u>22-21205</u> -B-13 XAVIER ATES
<u>RDG</u> -1 Pro Se
<u>See Also #10</u> | CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
RUSSELL D. GREER
7-11-22 [<u>22</u>] |
|----|---|--|

Final Ruling

This case is dismissed for reasons stated at Item #10, RDG-2. Therefore, the objection to confirmation is overruled as moot.

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

The court will issue an order.

September 6, 2022 at 1:00 p.m.

2. [22-20924](#)-B-13 MEAGAN MONAGHAN
[DWE](#)-1 Pro Se
See Also #13-15

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-4-22 [[57](#)]

FREEDOM MORTGAGE CORPORATION
VS.

Final Ruling

No appearance at the September 6, 2022, hearing is necessary. The September 6, 2022, hearing is a preliminary hearing for purposes of 11 U.S.C. § 362(e) which means the automatic stay will remain in effect pending a final hearing. This matter is **continued to September 13, 2022, at 1:00 p.m.** for a final hearing to be heard in conjunction with the continued motion to dismiss case, RDG-3.

The court will issue an order.

3. [13-27931](#)-B-13 BLANCA CANO
[BSH](#)-2 Brian S. Haddix

MOTION TO VALUE COLLATERAL OF
UNIFUND CCR PARTNERS
8-22-22 [[53](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

Because the motion is defective and relief cannot be granted, 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 deny the motion without prejudice.

The court is unable to ascertain the precise nature of the relief requested. The Debtor filed a motion to reopen this bankruptcy case on August 22, 2022, stating that the purpose of reopening was to "file local form EDC 3-190, 'Debtor's 11 U.S.C. § 1328 Certificate,' and receive a discharge." Dkt. 49 at 1:22-23. In the body of the same motion, the Debtor then references a motion to value. *Id.* at 2:18-24.

A motion to value was filed on August 22, 2022, but in it the Debtor asks the court to value and avoid a judgment lien. See dkt. 53. In that regard the motion appears to request inconsistent relief under 11 U.S.C. § 506(a) and 11 U.S.C. § 522(f). The court will not speculate the relief actually requested. Therefore, because the motion fails to state the relief requested and the grounds with the requisite particularity, it will be denied without prejudice. See Fed. R. Bankr. P. 9013.

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

The court will issue an order.

4. [22-21531](#)-B-13 MIZHGHAN ALAM
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
8-9-22 [[25](#)]

CONTINUED TO 9/20/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS
SET FOR 9/14/22.

Final Ruling

No appearance at the September 6, 2022, hearing is necessary. The court will issue an
order.

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 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 continue the hearing on the motion to approve loan modification to September 27, 2022, at 1:00 p.m. and require the Debtor to supplement the record as stated below.

Debtor seeks to retroactively approve a loan modification. USAA Federal Savings Bank ("Creditor"), whose claim the plan provides for in Class 4, has offered a permanent loan modification that will reduce Debtor's mortgage payment from the current \$2,070.00 a month to \$1,836.89 a month as stated in a letter dated August 15, 2022, from Creditor to Debtor. Dkt. 38. This is a slight reduction from the amount stated in the Loan Modification Agreement. Dkt. 31. The terms under the Loan Modification Agreement commenced November 2021, whereas the terms under the recent letter are to commence October 2022.

The Chapter 13 Trustee filed an opposition questioning the good faith of the Debtor since the loan modification reduced Debtor's mortgage by over \$202 per month, but the Debtor did not state what she has done with the residual money paid since November 2021. Debtor's confirmed plan provides for payments of \$350.00 for 60 months. The total amount due through August 2022 is \$11,550.00. As of August 16, 2022, Debtor has tendered payments in the total amount of \$11,549.00.

Debtor filed a response and declaration stating that she has acted in good faith. The residual money has gone toward the purchase of tires for \$700.00, higher gas prices, and proposed future landscaping around her house that is impacted by large tree growth. Debtor states that she intends to pay her plan payment plus \$1. But not so fast.

By September 13, 2022, it is **ORDERED** that the Debtor shall file and serve a declaration that: **(1)** identifies when any loan modification (a) was entered into and (b) became effective; **(2)** states when the Debtor began making modified loan payments or payments other than in the amount of \$2,079 as stated in the confirmed plan, dkt. 2, page 4, and further identifies the amount of any reduced or modified monthly loan payment; **(3)** explains in detail why the Debtor failed to seek court approval for the loan modification before entering into it; **(4)** states whether the Debtor's attorney was aware of the loan modification and the inconsistency between any modified monthly loan payment and the monthly payment stated in the confirmed plan; **(5)** provides an accounting of funds spent that includes dates and amounts and provides any supporting documentation; and **(6)** states anything further that the Debtor considers relevant to the determination of whether the Debtor acted in bad faith.

By September 13, 2022, it is **ORDERED** that the Debtor shall also file a memorandum of points and authorities that addresses whether the court can grant retroactive approval of the loan modification agreement taking into consideration the discussion in this court's opinion in *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020), and the authorities discussed therein.

The Trustee or any other party in interest may file and serve a response by **September 20, 2022**.

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

The court will issue an order.

6. [19-27353](#)-B-13 MAZEN HAWASH
[JCK](#)-4 Kathleen H. Crist

MOTION TO MODIFY PLAN
7-20-22 [[61](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection to the Debtor's motion to modify plan, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) 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 20, 2022, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE 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.

7. [19-24371](#)-B-13 SHAWNTE/MONIQUE MOTION TO MODIFY PLAN
 [WLG](#)-3 LIVINGSTON 8-9-22 [[51](#)]
 Nicholas Wajda

Final Ruling

The motion was not 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). Only 28 days' notice was provided. Therefore, the motion to modify plan is denied without prejudice.

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 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, Debtor's plan provides for 46 payments in the amount of \$593.42 or \$27,297.32. In order to comply with the Paragraph 3.07(a) of the plan, the arrearage dividend commencing in month 15 must be \$639.71. 11 U.S.C. § 1325(a)(6)]

Second, the plan proposes payments of \$3,416.00 a month for 14 months and \$5,900.00 a month thereafter. However, Debtor's amended Schedules I and J indicate monthly net income of \$3,516.00, which is \$2,384.00 less than the monthly payment for months 15 through 60. Until debtor demonstrates that he has the ability to fund the plan beyond month 14, it cannot be determined whether Debtor can make the required plan payments and or if the plan is feasible. 11 U.S.C. § 1325(a)(6).

Third, Section 7.04 of the plan states that "[d]istributions to priority unsecured claims, Class 5, do not begin until month 15." This provision is inconsistent with the standard distribution provisions of the plan at Section 5.02(c) and should be stricken. 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.

9. [21-23801](#)-B-13 ROBERT MOLINA
[RDG](#)-2 Nicholas Wajda

CONTINUED MOTION TO DISMISS
CASE
8-11-22 [[100](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 104, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 6, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

10. [22-21205](#)-B-13 XAVIER ATES
[RDG](#)-2 Pro Se
See Also #1

CONTINUED MOTION TO DISMISS
CASE
8-11-22 [[34](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 45, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 6, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

11. [21-22917](#)-B-13 STEVEN/EMELDA CLYMER
[RDG](#)-2 G. Michael Williams

CONTINUED MOTION TO DISMISS
CASE
8-15-22 [[99](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Debtors filed a timely response stating that they intend to file and serve a new plan on or before September 12, 2022, and request that the Trustee's motion be conditionally denied.

Rather than conditionally denying the motion to dismiss, this matter will be **continued to September 13, 2022, at 1:00 p.m.** If a new plan is not filed and served, and a confirmation hearing is not set, the motion to dismiss will be granted.

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

The court will issue an order.

12. [21-23220](#)-B-13 HARDEEP SINGH
[RDG](#)-3 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
8-11-22 [[53](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Debtor filed a timely response and a second amended plan with a scheduled confirmation hearing date of October 18, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 57 and the continued hearing on September 6, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

13. [22-20924](#)-B-13 MEAGAN MONAGHAN
[RDG](#)-3 Pro Se
Thru #15
See Also #2

CONTINUED MOTION TO DISMISS
CASE
8-11-22 [[68](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 **conditionally grant the motion to dismiss case and continue the matter to September 9, 2022, at 1:00 p.m.**

First, as of August 11, 2022, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,400.00 under the terms of the proposed plan. No payments have been made by the Debtor to date. 11 U.S.C. § 1307(c).

Second, although the Debtor appeared at the first meeting of creditors held 5/26/22, the Chapter 13 Trustee was not able to examine the Debtor since she failed to provide proper identification and verification of her social security number. See dkt. 74. The meeting of creditors was thereafter continued to 6/23/22, but the Debtor failed to appear at that and all subsequent ones: 7/7/22, 7/21/22, 8/4/22, and 9/01/22. Although another meeting of creditors has been scheduled for 9/15/22, the court doubts that Debtor will appear given her history of nonappearance. The failure by the Debtor to perform the duties required of her is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 9, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on September 13, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on September 13, 2022, at 1:00 p.m.

14. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED OBJECTION TO
[RDG](#)-1 Pro Se CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-1-22 [[16](#)]

Final Ruling

No appearance at the September 6, 2022, hearing is necessary. This matter is **continued to September 13, 2022, at 1:00 p.m.** to be heard in conjunction with the continued motion to dismiss case, RDG-3.

The court will issue an order.

15. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED OBJECTION TO
[DWE](#)-1 Pro Se CONFIRMATION OF PLAN BY FREEDOM
MORTGAGE CORPORATION
6-1-22 [[24](#)]

Final Ruling

No appearance at the September 6, 2022, hearing is necessary. This matter is **continued to September 13, 2022, at 1:00 p.m.** to be heard in conjunction with the continued motion to dismiss case, RDG-3.

The court will issue an order.

16. [22-20341](#)-B-13 RYAN CUSTODIO
[RDG](#)-3 Thomas A. Moore

CONTINUED MOTION TO DISMISS
CASE
8-11-22 [[34](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 38, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 6, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

17. [21-23777](#)-B-13 NATALIE YOST
[RDG](#)-3 Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
8-15-22 [[39](#)]

Final Ruling

This matter was continued from August 30, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 2, 2022. Although the Debtor did not file a response, the Debtor filed a second amended plan with a scheduled confirmation hearing date of October 11, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 43 and the continued hearing on September 6, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.