

**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 7, 2021

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 7, 2021 at 1:00 p.m.

-
1. [21-21302](#)-B-13 PETER/REBECCA ORNELAS MOTION FOR CONSENT TO ENTER
[TAA](#)-1 Kevin Tang INTO LOAN MODIFICATION
AGREEMENT
7-29-21 [[28](#)]

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 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 grant the motion to enter into a loan modification.

Debtors seeks court approval to incur post-petition credit. PHH Mortgage Corporation ("Creditor"), whose claim the plan provides for in Class 4, and Newrez ("Sub-Servicing Agent") have agreed to a loan modification. Although the monthly payment slightly higher by approximately \$50, the modification will reduce escrow payment from the current \$406.06 a month to \$331.33 a month and reduce the interest rate from 3.125% to 2.75%. The new principal balance will be \$301,675.40. The first mortgage payment due under the agreement is on July 1, 2021, and will be a duration of 171 monthly payments.

The Chapter 13 Trustee filed an opposition stating that the terms of the loan are not stated in Debtors' motion. Debtors filed a response and exhibit detailing the terms of the loan modification agreement.

The motion is supported by the Declaration of Peter Ornelas and Rebecca Ornelas. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. The motion complies with the provisions of 11 U.S.C. § 364(d) and is granted.

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

The court will issue an order.

September 7, 2021 at 1:00 p.m.

2. [21-22106](#)-B-13 CHERI GRAY
[PGM](#)-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
7-28-21 [[26](#)]

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 first amended plan.

First, Debtor's amended Schedule I provides for monthly income of \$1,552.50 from Social Security Disability and \$450.00 from her brother's contribution as a resident in her home. However, the Debtor has not provided verification or a declaration of these incomes. It cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan relies on a motion to avoid lien for Credit Bureau of Stockton. That motion was denied on August 17, 2021. The plan does not have sufficient monies to pay the claim in full and therefore cannot be confirmed.

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.

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 Debtors have 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 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.

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 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 permit the requested modification and not confirm the modified plan.

First, the Debtor's plan seeks to surrender a 2014 Dodge Challenger of creditor Santander Consumer USA/Peritus Portfolio Services II, LLC. Feasibility of the plan depends on Peritus Portfolio Services II, LLC amending its proof of claim 4-1 to indicate the updated deficiency balance since the Chapter 13 Trustee has already disbursed \$19,175.35 toward its claim.

Second, Creditors Nationstar Mortgage (3-1) and U.S. Department of Housing and Urban Development (1-1) have filed proof of claims for the property located at 2158 Wellington Drive, Tracy, California, in the secured amounts of \$203,636.01 and \$80,633.44, respectively. Debtor's plan does not provide for these secured claims.

Third, the Debtor has improperly altered the form plan in Section 7.

Fourth, the Debtor's declaration in support of the motion is not signed by the Debtor.

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 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 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 permit the requested modification and confirm the modified plan.

First, the Debtors agree with the Chapter 13 Trustee to provide for post-petition arrears of \$2,830.34 to Summit Funding Inc. for months October 2020 and November 2020.

Second, the Debtors agrees with the Trustee to provide for additional post-petition arrears of \$4,246.05 to Summit Funding Inc. for months May 2021 through July 2021.

Third, the Debtors agree with the Trustee to provide a monthly dividend of \$132.69 beginning August 2021 in order to pay Summit Funding Inc.'s claim in full in 32 months.

Fourth, the Debtors have filed amended schedules on August 24, 2021, to show that they can afford the monthly plan payment of \$2,464.00 beginning August 2021.

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 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.

6. [20-25153](#)-B-13 MICHAEL/JOLENE YATES
[CLH](#)-4 Charles L. Hastings

CONTINUED MOTION TO CONFIRM
PLAN
7-6-21 [[88](#)]

Final Ruling

No appearance at the September 7, 2021, hearing is required. The motion is continued to October 5, 2021, at 1:00 p.m. per the order on joint request to continue the hearing. See dkt. 118.

The court will issue an order.

7. [20-25455](#)-B-13 GARY/SANDRA ELLENBOLT MOTION TO MODIFY PLAN
[JCK](#)-5 Kathleen H. Crist 7-22-21 [[31](#)]

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)(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 22, 2021, 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 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.

8. [20-22558](#)-B-13 JESSE MORGAN II AND MOTION TO MODIFY PLAN
JM-1 CHERLYN COMBS-MORGAN 7-7-21 [[29](#)]
Thru #9 James P. Mootz

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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed a new modified plan on August 4, 2021. The confirmation hearing for the modified plan is scheduled for September 7, 2021. The earlier plan filed July 7, 2021, is not confirmed.

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

The court will issue an order.

9. [20-22558](#)-B-13 JESSE MORGAN II AND MOTION TO MODIFY PLAN
JM-1 CHERLYN COMBS-MORGAN 8-4-21 [[35](#)]
James P. Mootz

Final Ruling

The motion has been set for hearing on only 34-days' notice and not 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 motion is therefore denied without prejudice.

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

The court will issue an order.

10. [21-20437](#)-B-13 ANGELA WARE-PERKINS
[RDG](#)-1 Hank W. Walth

CONTINUED MOTION TO DISMISS
CASE
8-12-21 [[55](#)]

Final Ruling

This matter was continued from August 31, 2021, to allow any party in interest to file by September 3, 2021, at 5:00 p.m. an opposition or response to the motion to dismiss case. A response was timely filed by the Debtor.

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 to dismiss case.

Debtor filed a timely response stating that she contacted her attorney on August 30, 2021, confirmed that she is delinquent in payments, acknowledged being remiss in not contacting her attorney sooner, and requested that her attorney file an amended plan. Debtor stated that she has been very ill and sidetracked by the recent death of her nephew.

The court's conditional ruling at dkt. 59 is 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.

11. [21-20969](#)-B-13 ALFEDO/MARTHA ALEGRIA
[RDG](#)-3 Nikhil Bhatnagar

CONTINUED MOTION TO DISMISS
CASE
8-12-21 [[50](#)]

Final Ruling

This matter was continued from August 31, 2021, to allow any party in interest to file by September 3, 2021, at 5:00 p.m. an opposition or response to the motion to dismiss case. No opposition or response was timely filed. The court's ruling conditionally granting the motion to dismiss case at dkt. 54 shall become the court's final decision. The continued hearing on September 7, 2021, at 1:00 p.m. is vacated.

The court will issue an order.

12. [21-20770](#)-B-13 ANGELAS ASHLEY
[RDG](#)-2 Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
8-11-21 [[20](#)]

Final Ruling

This matter was continued from August 31, 2021, to allow any party in interest to file by September 3, 2021, at 5:00 p.m. an opposition or response to the motion to dismiss case. No opposition or response was timely filed. The court's ruling conditionally granting the motion to dismiss case at dkt. 33 shall become the court's final decision. The continued hearing on September 7, 2021, at 1:00 p.m. is vacated.

The court will issue an order.

13. [21-20771](#)-B-13 DAVID SCHEIDT
[RDG](#)-2 David S. Van Dyke

CONTINUED MOTION TO DISMISS
CASE
8-11-21 [[34](#)]

Final Ruling

This matter was continued from August 31, 2021, to allow any party in interest to file by September 3, 2021, at 5:00 p.m. an opposition or response to the motion to dismiss case. No opposition or response was timely filed. The court's ruling conditionally granting the motion to dismiss case at dkt. 38 shall become the court's final decision. The continued hearing on September 7, 2021, at 1:00 p.m. is vacated.

The court will issue an order.

14. [21-21489](#)-B-13 ARTHUR MENDOZA AND CONTINUED MOTION TO DISMISS
[RDG](#)-3 CONSUELO LEYVA MENDOZA CASE
Mikalah R. Liviakis 8-12-21 [[63](#)]

Final Ruling

This matter was continued from August 31, 2021, to allow any party in interest to file by September 3, 2021, at 5:00 p.m. an opposition or response to the motion to dismiss case. No opposition or response was timely filed. The court's ruling conditionally granting the motion to dismiss case at dkt. 67 shall become the court's final decision. The continued hearing on September 7, 2021, at 1:00 p.m. is vacated.

The court will issue an order.