

**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: October 3, 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
Sacramento, California

October 3, 2023 at 1:00 p.m.

1. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ MOTION TO MODIFY PLAN
[GSJ](#)-3 Grace S. Johnson 8-10-23 [[104](#)]

Final Ruling

The motion has 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, Debtors' plan provides for post-petition arrears totaling \$2,321.43 to Class 1 Creditor, Rightpath Servicing. However, the Chapter 13 Trustee's disbursement records show that there are no outstanding post-petition arrears on Rightpath Servicing's claim. The Trustee cannot appropriately administer the distribution of monies without further clarification. It cannot be determined whether the Debtors' plan is feasible.

Second, the Debtors' plan attempts to modify the interest paid to Exeter Finance LLC to 3%. This creditor is being paid 6.5% pursuant to Debtors' currently confirmed plan. As such, the Debtors may not modify the interest rate paid to this creditor. 11 U.S.C. § 1325(a)(6), 11 U.S.C. § 1329.

Third, the Debtors' plan attempts to modify the interest paid to Peritus Portfolio Services II, LLC (formally Santander) to 3%. This creditor is being paid 6.5% pursuant to Debtors' currently confirmed plan. As such, Debtors may not modify the interest rate paid to this creditor. 11 U.S.C. § 1325(a)(6), 11 U.S.C. § 1329.

Fourth, Debtors' Schedule J filed March 6, 2023, includes a \$600.00 monthly "Entertainment and Recreation" expense. This expense is excessive for a household of four considering that the Debtors are reducing the dividend to Class 7 general unsecured creditors from 100% to 0%.

Fifth, Section 7 Non-Standard Provisions of Debtors' plan provides for plan payments totaling \$27,104.70 through September 2023. As of September 14, 2023, Trustee records indicate that the Debtors have paid a total of \$28,610.00. Accordingly, Debtors' plan incorrectly accounts for payments already made to the Trustee.

Sixth, Debtor's plan proposes a payment of \$3,900.94 per month for months 38-60. The Debtors' made a payment of \$4,210.00 for month 39 and payments of \$4,200.00 for months 40-42. It cannot be determined whether the plan is proposed in good faith without an explanation as to why Debtors have been making higher plan payments than proposed in the amended plan. Moreover, this puts into question the accuracy of filed Schedules I

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& J filed March 6, 2023. It cannot be determined whether the plan is feasible. 11 U.S.C. § 1325(a)(3), 11 U.S.C. § 1325(a)(6).

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 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, the Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Based on the proposed monthly plan payments to secured creditors and with the addition of the Chapter 13 Trustee's compensation and expense, monthly payments total \$1,962.55. However, the Debtor's plan provides for payments of \$1,502.00 for 5 months and \$1,962.00 for 55 months.

Second, the Bank of New York Mellon has filed secured Claim No. 8-1 in the amount of \$399,347.58 for property located at 9908 D Street, Oakland, California. However, the Debtor's motion states that this property was foreclosed on over two years ago. Debtor's attorney has reached out to the bank's counsel to request that it voluntarily withdraw the claim. Until this is done or an objection to the claim is sustained, the plan is not feasible.

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 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.

First, the Debtor is not eligible to be debtor under 11 U.S.C. § 109(h). The Debtor has failed to file credit counseling certificates evidencing that she obtained the credit counseling mandated by 11 U.S.C. § 109(h). Without a credit counseling certificate, it cannot be determined whether the Debtor is eligible to be Debtor under Title 11 of the United States Code.

Second, the Debtor has failed to provide the Chapter 13 Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv). This is required seven days before the date set for the first meeting of creditors pursuant to Local Bankr. R. 1007-1.

Third, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). The Debtor failed to file the correct version of the plan as required by General Order 18-3, the plan is incomprehensible, and the Statement of Financial Affairs fails to accurately list income for the current year and previous two years.

Fourth, Schedule C is incomplete and it cannot be determined whether Debtor's plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

Fifth, the Debtor filed Schedule I and J that show an income of \$2,289.00 each month but her expenses total \$2,300.00. The Debtor cannot afford any plan payment if the budget is correct.

The plan filed July 27, 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.

4. [23-22341](#)-B-13 ALEJANDRO HERNANDEZ AND OBJECTION TO CONFIRMATION OF
[CJK](#)-1 TRINIDAD VILLASENOR PLAN BY SERVICEMAC, LLC
Thru #5 Mikalah Liviakis 9-12-23 [[26](#)]

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.

Objecting creditor ServiceMac, LLC ("Creditor") holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$1,507.68 in pre-petition arrearages.

The Debtors' proposed plan lists Creditor in Class 4 but it should actually be listed in Class 1 due to the existence of pre-petition arrears owed on Creditor's lien. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed July 15, 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.

5. [23-22341](#)-B-13 ALEJANDRO HERNANDEZ AND OBJECTION TO CONFIRMATION OF
[LGT](#)-1 TRINIDAD VILLASENOR PLAN BY LILIAN G. TSANG
Mikalah Liviakis 9-7-23 [[22](#)]

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.

First, Debtors' schedules list non-exempt assets totaling \$49,048.00, and unsecured

priority claims totaling \$0. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$49,048.00. Accordingly, in order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtors' plan must pay 100% to Debtors' general unsecured creditors, plus interest at the Federal Judgment Rate of 5.36% since the value of the non-exempt assets exceeds the amount of the general unsecured claims. Debtors' plan only pays 53%, and, accordingly, it fails the liquidation test.

Second, Debtors' Schedule I lists gross monthly wages for Debtor of \$6,933.33. However, Schedule I states that the income listed is projected income. Debtor has testified at his meeting of creditors that he anticipates earnings of only \$4,800.00 per month. Based on Debtor's testimony, it would appear that Debtors will be unable to make the proposed plan payment. Accordingly, Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed July 15, 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 first amended plan.

Creditor United Fidelity Funding, Corp.'s objection to confirmation on the basis that the plan does not provide for its claim consistent with 11 U.S.C. § 1325(b)(5) and therefore in Class 2 will be sustained. Creditor filed a secured proof of claim on April 15, 2023. See Claim No. 4-1. According to the proof of claim, the entirety of Creditor's claim was due on the Chapter 13 petition date.

The Debtor has not objected to the proof claim, which means that the claim asserted in the proof of claim is deemed allowed, 11 U.S.C. § 502(a), and is presumptively valid as to its characterization and amount. See Fed. R. Bankr. P. 3001(f). The unobjected proof of claim also governs plan treatment of Creditor's claim. See *dk*t. 40 at § 3.02. As such, this requires classification of Creditor's claim under Class 2 and not Class 4 as currently proposed in the plan. Based on Debtor's misclassification and Creditor's objection, the plan is not confirmable and Creditor's objection to confirmation of the plan on this basis will be sustained.

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.

7. [23-20365](#)-B-13 TERRY CASE MOTION TO AVOID LIEN OF
[TBK](#)-5 Taras Kurta CITIBANK, N.A.
Thru #8 8-21-23 [[57](#)]

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 to avoid lien of Citibank, N.A.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtor's property commonly known as 1955 Harvest Landing Court, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,908.88. An abstract of judgment was recorded with San Joaquin County on December 12, 2019, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$620,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$505,994.69 on Schedule C and not in the amount of \$600,000.00 as stated in the motion. A first deed of trust in favor of FlagStar Bank recorded against the Property totals \$114,005.31.

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.

8. [23-20365](#)-B-13 TERRY CASE MOTION TO CONFIRM PLAN
[TBK](#)-6 Taras Kurta 8-21-23 [[61](#)]

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 has 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 failed to obtain court approval for a new debt pursuant to Local Bankr. R. 3015-1(b)(2) when he borrowed \$44,000.00 from his 401(k) retirement plan in February 2, 2022, to repay prepetition loans to his father and sister, car repairs and car rental, vet expenses, and a federal tax bill.

Second, the Debtor's proposed plan reduces plan payments by \$405.00 and the dividend to unsecured creditors from 19% to 12% while paying back the \$44,000.00 retirement loan at \$997.56 per month, of which \$13,200.00 of the retirement loan funds was used to repay prepetition loans to his father and sister. The plan is not proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3).

Third, the Debtor's plan does not propose to pay all available income into the plan and is not proposed in good faith. 11 U.S.C. §§ 1325(a)(3), (b)(1)(B). Debtor's Supplemental Schedule I shows a payroll deduction of \$171.69 per month for voluntary contribution to a retirement plan. This expense was not included in the previously filed Schedule I and is not reasonable or necessary. See *In re Parks*, 475 B.R. 703 (9th Cir. BAP August 6, 2012).

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.

10. [22-21609](#)-B-13 FRANCISCO/MARIA PADILLA CONTINUED MOTION TO DISMISS
[LGT](#)-1 Peter G. Macaluso CASE
9-7-23 [[91](#)]

Final Ruling

This matter was continued from September 26, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 29, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 107, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on October 3, 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.

11. [23-21232](#)-B-13 ERIC CONLEE
[LGT](#)-1 Charles L. Hastings

CONTINUED MOTION TO DISMISS
CASE
9-12-23 [[28](#)]

Final Ruling

This matter was continued from September 26, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 29, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 32, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on October 3, 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.