

**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: October 17, 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**

**October 17, 2023 at 1:00 p.m.**

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1.    [23-90326](#)-B-13    KRISTOPHER COOPER    MOTION TO CONFIRM PLAN  
      [FAT](#)-3           Flor De Maria A. Tataje    8-30-23 [[45](#)]

**Final Ruling**

The Debtor 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.

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

**October 17, 2023 at 1:00 p.m.**

**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.

First, the Debtor is delinquent \$7,104.00 in plan payments through September 25, 2023. The Debtor has paid \$42,946.00 into the plan to date. Based on the delinquency in plan payments, the Debtor may not be able to make the plan payments. 11 U.S.C. §§ 1325(a)(2), (a)(6).

Second, the plan provides for Truist Bank as a Class 1 creditor with pre-petition arrears of \$98,326.31 and a post-petition monthly payment of \$4,091.71. Debtor's payments to the Chapter 13 Trustee have been inconsistent and in various amounts, and the Trustee was unable to disburse to the Class 1 creditor post-petition claim in the months of November 2022 and February, April, and June 2023. While disbursements in the amount of \$8,183.42 were made by the Trustee in the months of March, May and July 2023, the post-petition claim of Truist Bank remains in arrears. The Debtor's plan does not provide for post-petition arrears and accordingly is not feasible. 11 U.S.C. § 1325(a)(6).

Third, the plan provides for payments of \$4,550.00 a month for 14 months and \$5,900.00 a month for 46 months, and a lump sum payment of \$150,000.00 in month 14 of the plan from the sale of the bare land adjacent to Debtor's home. Debtor's proposed sale of the property within two months of confirmation is speculative. At this time, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Fourth, it appears that the Debtor cannot afford increased plan payments. Debtor's Schedule J filed at the inception of the case shows a monthly net income of \$3,883.00. However, the plan proposes payments of \$4,550.00 a month for 14 months and \$5,900.00 a month for 46 months. Until amended schedules are filed, 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.