

**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 20, 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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

October 20, 2020 at 1:00 p.m.

1.	<u>18-90802</u> -B-13 ALLEN/CORINA SANDERS	MOTION TO MODIFY PLAN
	<u>BSH</u> -8 Brian S. Haddix	9-12-20 [<u>116</u>]

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.

2. [19-90305](#)-B-13 DANI IBRAHIM AND ATOURINA MOTION TO MODIFY PLAN
[BSH](#)-2 NISANO 9-13-20 [[59](#)]
Brian S. Haddix

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, the Debtors provide for post-petition mortgage arrears to NewRez LLC/Shellpoint Mortgage Servicing representing the month of March 2020 but the Chapter 13 Trustee's records indicate that this mortgage claim is current through August 2020.

Second, Debtors' plan proposes a monthly payment of \$2,797.00 beginning in September 2020 and \$4,635.00 beginning May 2021. Debtors have failed to file supplemental Schedule I and/or Schedule J to support the plan payment moving forward. Without the updated schedules, it cannot be determined whether the proposed plan is feasible.

Third, Debtors' plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). The declarations in support of the motion to modify provide that the purpose of the proposed modified plan is to extend the plan term utilizing the CARES Act. However, Debtors' declarations are devoid of any material evidence of "material financial hardship" suffered as a result of COVID-19 and why an extension of the plan is necessary. See *In re Gilbert*, 2020 WL 5939097, *4 (Bankr. E.D. La. Oct. 16, 2020) ("Albeit a low bar, § 1329(d)(1) now imposes on those Debtors the requisite to show a material financial hardship due directly or indirectly to the pandemic[.]").

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 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, the plan does not include the Debtor's wet signature.

Second, Debtor's plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). The declaration in support of the motion to modify provides that the purpose of the proposed modified plan is to extend the plan term utilizing the CARES Act. However, Debtor's declaration is devoid of any evidence of "material financial hardship" suffered as a result of COVID-19 and why an extension of the plan is necessary. See *In re Gilbert*, 2020 WL 5939097, *4 (Bankr. E.D. La. Oct. 16, 2020) ("Albeit a low bar, § 1329(d)(1) now imposes on those Debtors the requisite to show a material financial hardship due directly or indirectly to the pandemic[.]").

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.

4. [20-90428](#)-B-13 ANGEL MEDRANO
[BSH](#)-2 Brian S. Haddix

MOTION TO CONFIRM PLAN
9-12-20 [[52](#)]

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). An opposition was filed and subsequently withdrawn. 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 is delinquent in plan payments. The Nonstandard Provisions of Debtor's plan provides for plan payments of \$475.00 beginning August 2020. Trustee records indicate Debtor failed to make a plan payment in August 2020 and September 2020. As such, he is \$950.00 delinquent under the proposed plan.

Second, Debtor's plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). Debtor's Schedule I provides that a retirement loan of \$512.00 per month will be paid off in July 2020. However, Debtor does not provide for an increase in plan payments starting August 2020 in light of the increased income available without the retirement loan payment.

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 an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Generally, oral argument may be presented by the parties at the scheduled hearing. However, in light of the court's closure due to the COVID-19 pandemic, 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 grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 517 Melrose Street, Modesto, California ("Property").

Proposed purchaser Lucero Antonia Juarez has agreed to purchase the Property for \$280,000.00. Prior to this motion, the court had granted Debtor's motion to sell, BSH-2, but the prior buyer thereafter rescinded its offer. Mr. Juarez is a different buyer and the current offer is \$5,000.00 higher than the one previously approved by the court.

Pursuant to California Code of Civil Procedure § 704.730, the Debtor claims the proceeds from the sale exempt. The Debtor will use the \$56,000.00 of the proceeds as down payment to purchase another primary residence. The purchase price of the new primary residence is \$280,000.00. Debtor intends to use the balance of the proceeds to improve the new primary residence and will provide the Trustee with a monthly accounting of funds spent toward home improvement. No objection has been filed to this motion to sell.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

The motion is granted for reasons stated in the minutes. It is further ordered that the conditions and restrictions imposed on the sale and purchase in BSH-2 shall apply and are incorporated herein by this reference. See dkt. 58.

Debtor's attorney shall prepare an order substantially in the form of the order at Docket 57 which shall be approved by the Chapter 13 Trustee.