

**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 24, 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.

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

October 24, 2023 at 1:00 p.m.

1. [23-90319](#)-B-13 LAWRENCE QUALLS CONTINUED OBJECTION TO
[LGT](#)-1 Pro Se CONFIRMATION OF PLAN BY LILIAN
 G. TSANG
 9-12-23 [[32](#)]

CONTINUED TO 11/07/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 11/01/23.

Final Ruling

No appearance at the October 24, 2023, hearing is required. The court will issue an order.

October 24, 2023 at 1:00 p.m.

2. [20-90020](#)-B-13 JOHN DIAZ
Bradley J. Swingle

MOTION TO WAIVE SECTION 1328
CERTIFICATE REQUIREMENT,
SUBSTITUTE PARTY, AS TO DEBTOR
9-8-23 [[45](#)]

Final Ruling

Debtor's counsel has failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the motion for omnibus relief upon death of debtor is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE 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 by the Chapter 13 Trustee and creditor Golden 1 Credit Union.

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 Debtors' fail to allege all significant factual matters under 11 U.S.C. § 1325(a)(1)-(9). While Debtors' motion and declaration state that they have filed a first amended plan and request that the court confirm it, the motion does not provide information that would be of use to the parties, such as a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtors to file and request confirmation of this first amended plan. Instead, the Debtors require all parties to read and review all the documents filed previously and draw their own conclusions.

Second, all sums required by the plan have not been paid and the Debtors may not be able or willing to make the plan payments based on their current delinquency under the pending plan. 11 U.S.C. § 1325(a)(2), (a)(6). The plan provides for payments of \$2,850.00 a month for 60 months. The Debtors are \$5,750.00 delinquent in plan payments through September 25, 2023. They have paid \$22,750.00 into the plan to date.

Third, feasibility relies on a motion to value collateral for Golden 1 Credit Union being filed and granted by the court. If the motion to value is not filed and granted, the plan does not have sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a)(6).

Fourth, Debtors' Schedules I and J evidence net disposable income of \$3,000.00. Debtor's original plan proposed payments of \$3,000.00 a month for 60 months. Debtors first amended plan proposes payments of \$2,850.00 for 60 months. Debtors' motion and declarations in support of their motion are silent as to the reasoning behind the reduced plan payment. Unless Debtors' plan provides for the payment of this additional projected disposable income to general unsecured creditors, the plan fails to comply with 11 U.S.C. § 1325(b).

Fifth, Debtors fail to amend their petition to correctly identify prior bankruptcy filings within the last 9 years and therefore the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3). This issue was previously raised by the Chapter 13 Trustee and sustained by the court on March 28, 2023, dkt. 38, and the Debtors have failed to submit any evidence explaining their failure to do so.

Sixth, Debtors' Schedule I includes pension or retirement income of \$542.00 for Mr. Kendall Miller. Debtors have failed to provide any documentation to verify the pension, and the pension income does not appear on Debtors' 2021 income tax returns. This issue was previously raised by the Chapter 13 Trustee and sustained by the court on March 28, 2023, dkt. 38.

Seventh, additional pay advices from Mrs. Miller are needed since the year-to-date earnings do not match the totals listed on Schedule I. This issue was previously raised by the Chapter 13 Trustee and sustained by the court on March 28, 2023, dkt. 38.

Eighth, additional information is needed regarding Debtors' Social Security Benefits in the amount of \$150,000 in 2021. Without the additional information, it cannot be determined whether the plan provides all of Debtors' projected disposable income will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b). This issue was previously raised by the Chapter 13 Trustee and sustained by the court on March 28, 2023, dkt. 38.

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.

4. [23-90328](#)-B-13 LINDA WILLHITE
[SDS](#)-1 Susan D. Silveira

MOTION TO CONFIRM PLAN
9-18-23 [[21](#)]

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.

5. [23-90437](#)-B-13 KEANNA ALMEDA
[ADR-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-6-23 [[15](#)]

WESTDALE COMMONS VS.

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 and continue the matter to October 31, 2023, at 1:00 p.m.**

Westdale Commons ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4121 Dale Road, #61, Modesto, California (the "Property"). Movant has provided the Declaration of Erika Vega to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Vega Declaration states that there is \$5,000.00 in pre-petition payments in default and \$810.16 in post-petition payments in default. The Declaration also states that Movant is the legal owner of the property and that Debtor is a lessee. Dkt. 18, exh. 1. Movant seeks to proceed with the unlawful detainer action.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant served a notice to pay rent or quit on June 27, 2023. Dkt. 18, exh. 2. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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, October 27, 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 October 31, 2023, 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 October 31, 2023, at 1:00 p.m.