

**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: November 2, 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
Modesto, California

November 2, 2021 at 1:00 p.m.

1. [20-90321](#)-B-13 MICHAEL/ALEXIS OKARMUS MOTION TO MODIFY PLAN
[JAD-1](#) Jessica A. Dorn 9-24-21 [[35](#)]
Thru #2

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.

The Chapter 13 Trustee objects to confirmation on grounds that feasibility depends on the granting of Joint Debtor Alexis Okarmus being appointed as successor in this case. A motion to substitute is heard at Item #2, JAD-2, and granted.

Additionally, the Trustee objects to confirmation on grounds that the plan may not be proposed in good faith under 11 U.S.C. §1325(a)(3), and may not pass the liquidation test under 11 U.S.C. §1325(a)(4). Joint Debtor Alexis Okarmus' declaration in support of the motion to modify indicates Debtor Michael Okarmus has passed away. Debtors' schedules lists a term life policy with a surrender or refund value of \$0.00. Trustee is unable to determine if Debtors' plan is proposed in good faith and passes liquidation test until Joint Debtor discloses whether he received or is entitled to receive life insurance proceeds and in what amount. Separately, Joint Debtor has failed to amend Schedules A/B and C to disclose and exempt proceeds as appropriate.

Amended schedules were filed on October 25, 2021, that state Joint Debtor is waiting to hear back from the life insurance company to see if he will be entitled to any benefits. Debtor acknowledges that he shall turn over any non-exempt life insurance proceeds to the Trustee. Joint Debtor has exempted \$50,000.00 in life insurance proceeds pursuant to California Code of Civil Procedure § 704.100(c).

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.

November 2, 2021 at 1:00 p.m.

2. [20-90321](#)-B-13 MICHAEL/ALEXIS OKARMUS MOTION TO WAIVE SECTION 1328
[JAD](#)-2 Jessica A. Dorn CERTIFICATE REQUIREMENT,
SUBSTITUTE PARTY, AS TO DEBTOR
9-24-21 [[43](#)]

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 substitute Joint Debtor Alexis Okarmus to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Joint Debtor Alexis Okarmus gives notice of the death of spouse Michael Okarmus and requests the court to substitute Alexis Okarmus in place of Michael Okarmus for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Alexis Okarmus for Michael Okarmus as successor-in-interest, and to waive the § 1328 and financial management requirements for Michael Okarmus. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

3. [16-91038](#)-B-13 MARCOS/LUPE DE LA CRUZ MOTION TO MODIFY PLAN
[PLG](#)-3 Rabin J. Pournazarian 9-27-21 [[71](#)]

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, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7 of Debtor's plan proposes a monthly payment of \$3,269.00 for 31 months (May 2020 through November 2022), then \$4,306.00 for 29 months (December 2022 through April 2025). Debtor has failed to file supplemental Schedules I and/or Schedule J to support the plan payment of \$4,306.00 beginning December 2022 (month 32). Without the updated schedules, Trustee is unable to determine whether the proposed plan is feasible. Trustee has raised this same issue in his opposition to motion to modify (dkt. 69) but Debtor fails to address this concern.

Second, all sums required by the plan have not been paid, 11 U.S.C. §1325(a)(2). Debtor has failed to make the payments proposed in the plan, Debtor is delinquent \$269.00 under the proposed plan. Section 7 of Debtor's plan provides for plan payments of \$3,269.00 for 31 months (May 2020 through November 2022), then \$4,306.00 for 29 months (December 2022 through April 2025). Through September 2021, month 17, these proposed plan payments total \$55,573.00. Trustee's records indicate that as of September 2021, Debtor has only remitted a total of \$55,304.00. As such, Debtor is \$269.00 delinquent under the proposed plan. Trustee has raised a plan delinquency in his opposition to motion to modify (dkt. 69) but Debtor fails to address this concern.

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.

5. [21-90361](#)-B-13 RASVINDER BAHIA OBJECTION TO CONFIRMATION OF
 [RDG](#)-1 David C. Johnston PLAN BY RUSSELL D. GREER
 10-5-21 [[17](#)]

CONTINUED TO 11/23/2021 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 11/17/2021.

Final Ruling

No appearance at the November 2, 2021, hearing is required. The court will issue an order.

6. [20-90347](#)-B-13 RICHARD MARTIN
[RDG](#)-1 David C. Johnston

CONTINUED AMENDED MOTION TO
DISMISS CASE
10-14-21 [[29](#)]

Final Ruling

This matter was continued from October 26, 2021, to allow any party in interest to file a response by 5:00 p.m. on October 29, 2021. No response was filed. Therefore, the court's ruling conditionally granting the amended motion to dismiss case at dkt. 33 shall become the court's final decision. The continued hearing on November 2, 2021, is vacated.

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

The court will issue an order.