

**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 7, 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**

**November 7, 2023 at 1:00 p.m.**

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|----|--|---------------------------|--|
| 1. | <a href="#">23-90319</a> -B-13<br><a href="#">LGT</a> -1<br><b><u>Add on #11</u></b> | LAWRENCE QUALLS<br>Pro Se | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY LILIAN<br>G. TSANG<br>9-12-23 [ <a href="#">32</a> ] |
|----|--|---------------------------|--|

**Final Ruling**

The case having been dismissed at Item #11, LGT-2, the objection to confirmation of plan is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

**November 7, 2023 at 1:00 p.m.**

2.     [23-90226](#)-B-13   RAUL/BERENISE MORENO                   MOTION TO CONFIRM PLAN  
          [CDL](#)-91           Colby D. LaVelle                   9-20-23 [[33](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of dismissal of its opposition to Debtors' motion to confirm first amended plan, the Trustee's opposition is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed September 9, 2023, will be 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.

3. [23-90336](#)-B-13 ERIC/DANIELLE CONNOLLY CONTINUED OBJECTION TO  
[LGT](#)-1 Simran Singh Hundal CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
9-13-23 [[17](#)]

### **Final Ruling**

This matter was continued from October 3, 2023, at the Debtors' request to provide the Debtors and Chapter 13 Trustee additional time to resolve the issues raised by the Trustee. 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 **continue the hearing to November 14, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtors' response states that Les Schwab will be added to Class 2 and paid through the plan. This is to be done by way of an amended plan and not an order confirming so that all creditors are put on notice since general unsecured creditors will be adversely affected.

Second, Debtors have not filed an amended Statement of Financial Affairs to accurately list business information for C4 Transport, LLC.

Third, any order confirming shall state that Debtors will provide copies of their state and federal income tax returns to the Chapter 13 Trustee on or before April 30 of each year for the duration of the plan. All tax refunds shall be turned over to the Chapter 13 Trustee as additional payments into the plan within 10 days of receipt by the Debtors.

The plan filed August 16, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

### **Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on November 10, 2023, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 November 14, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

4. [23-90259](#)-B-13 VICKIY MYERS  
[DCJ](#)-2 David C. Johnston

MOTION TO CONFIRM PLAN  
9-14-23 [[29](#)]

### **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 plan.

First, Debtor's Schedule F identifies Farmers & Merchants Bank as an unsecured claim in the amount of \$160,000.00. The creditor has filed a secured claim in the amount of \$227,539.80 (Claim 1-1). Debtor's plan does not list this creditor nor has Debtor filed a motion to avoid creditor's lien despite stating that she will do so. It is unclear whether Debtor intends to pay this creditor. 11 U.S.C. § 1325(a)(6).

Second, it is unclear whether Debtor can make the proposed plan payments. Debtor's Schedule I shows social security income of \$585.00 and business income of \$3,800.00. However, documents submitted by the Debtor show social security income of \$262.60 and business income of \$3,283.63.

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.

5. [20-90768](#)-B-13 JUAN/HEIDI RUIZ  
[LGT](#)-1 Simran Singh Hundal

OBJECTION TO CLAIM OF TFC  
CREDIT CORPORATION, CLAIM  
NUMBER 12  
10-3-23 [[81](#)]

### **Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 12-1 of TFC Credit Corporation and continue the matter to November 14, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of TFC Credit Corporation ("Creditor"), Claim No. 12-1. The claim is asserted to be in the amount of \$9,539.45. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was February 8, 2021. The Creditor's claim was filed September 25, 2023.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained / overruled.

**Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, November 10, 2023, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained 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 November 14, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at 1:00 p.m. for reasons stated in the minutes.

6. [23-90377](#)-B-13 GUSTAVO JIMENEZ  
[LGT](#)-1 Natali A. Ron  
**Thru #7**

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
10-11-23 [[27](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed August 16, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to November 14, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor's plan provides for 1% distribution to Debtor's general unsecured creditors but Form 122C-2 and Form 122C-1 indicates that there is additional projected disposable income available to be applied to make higher payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). Therefore, the plan is not confirmable.

Second, Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 2.01 of Debtor's plan provides for plan payments of \$2,550.00 for 60 months. Debtor has failed to provide admissible evidence that their plan is mathematically feasible. Calculations indicate that Debtor's plan payment will need to be at least \$2,608.00 in order for Debtor's plan to be feasible.

Third, Wells Fargo Bank, N.A. has filed a claim listing a secured portion of \$9,468.71 (Claim 4-1). Debtor's plan does not list this claim, and Schedule J and the Statement of Financial Affairs are silent as to treatment of this creditor. It is unclear whether Debtor intends to pay this creditor. 11 U.S.C. § 1325(a)(6).

Fourth, Debtor's plan and petition are not proposed in good faith under 11 U.S.C. § 1325(a)(3)(7). Debtor's Schedules A/B fails to list Debtor's business bank account with Chase, the plan does not provide for a step-up in plan payments when Debtor's support payments end in approximately 2.5 years, and the Statement of Financial Affairs fails to accurately list income for 2021.

The plan filed August 16, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

### **Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on November 10, 2023, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 November 14, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.



7. [23-90377](#)-B-13 GUSTAVO JIMENEZ  
[SKI](#)-1 Natali A. Ron

OBJECTION TO CONFIRMATION OF  
PLAN BY TD BANK, N.A.  
9-18-23 [[17](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed August 16, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to November 14, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtor's plan fails to accurately provide for the claim of TD Bank, N.A., successor in interest to TD Auto Finance LLC. The plan incorrectly states that the Debtor's obligation to this creditor is not a purchase money security interest, does not provide for the amount claimed by the creditor, and does not provide an appropriate interest rate under *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004).

The plan filed August 16, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

### **Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on November 10, 2023, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained 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 November 14, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at 1:00 p.m. 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)(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 by the Chapter 13 Trustee, a reply was filed by the Debtor, and a response was filed by the Trustee.

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, post-petition arrears owed to Allied First Bank are to be addressed by way of a new modified plan and not an order confirming so that all creditors, particularly auto creditors whose payments may be reduced under Section 5.02(c), have notice of the new treatment pursuant to Local Bankr. R. 3015-1(d)(2)

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7 - Nonstandard Provisions of Debtor's plan proposes a monthly payment of \$3,290.00 a month for months 43-60 (October 2023 to March 2025). Debtor has failed to provide admissible evidence that the plan is mathematically feasible.

Third, the monthly deduction for "Required repayments of retirement fund loans" in Supplemental Schedule I is understated. Pay advices show that the deduction is \$290.16 per month. Although Debtor did provide an explanation for the use of the money in her reply, she did not provide an explanation as to why a motion was not filed to have this loan approved by the court. Separately, Debtor's reply states that the loan will pay off in October 2024, month 55 of the plan, but does not provide for a step-up in plan payment.

Fourth, Debtor's Amended Schedule I lists gross wages at \$9,333.34 per month. This amount appears to be understated when compared to Debtor's recent pay advices. Debtor's pay advices received for the months of March 2023 through August 2023 indicate a year to date earning of \$74,170.33 or average monthly wages of \$9,889.38. Debtor's pay advices also show that she is paying \$0.00 to Federal and State Taxes. The accuracy of amended Schedules I & J filed September 8, 2023, is unclear. It cannot be determined whether the plan is feasible or if Debtor is contributing all of her disposable income into the plan.

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.

9. [22-90289](#)-B-13 CORY BRITTON  
[23-9017](#)  
KHAMIS V. BRITTON  
ADVERSARY PROCEEDING  
DISMISSED: 10/13/23

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-10-23 [[11](#)]

**Final Ruling**

The adversary proceeding was dismissed on October 13, 2023. The order to show cause for failure to pay the \$350.00 fee to file a complaint in the adversary proceeding is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the minutes.

The court will issue an order.

10. [23-90200](#)-B-13 JAMES/JUDITH HASSAY  
[LGT](#)-1 Mary D. Anderson

CONTINUED MOTION TO DISMISS  
CASE  
10-17-23 [[52](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 56, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 7, 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. [23-90319](#)-B-13 LAWRENCE QUALLS  
[LGT](#)-2 Pro Se  
**See Also #1**

CONTINUED MOTION TO DISMISS  
CASE  
10-12-23 [[45](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 58, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 7, 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.

12. [22-90223](#)-B-13 ALEO PONTILLO  
[LGT](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
10-17-23 [[102](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Debtor filed a timely response and a fourth amended plan with a scheduled confirmation hearing date of December 12, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 106 and the continued hearing on November 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

13. [22-90353](#)-B-13 KELLY SEARS  
[LGT](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
10-17-23 [[101](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Debtor filed a timely response and a third amended plan with a scheduled confirmation hearing date of December 12, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 105 and the continued hearing on November 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.