

**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 8, 2022

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 8, 2022 at 1:00 p.m.

1. [16-91000](#)-B-13 MAURICE/VENISE SMALLEY MOTION TO MODIFY PLAN
[BSH](#)-8 Brian S. Haddix 9-30-22 [[128](#)]

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.

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.

Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7 Non-Standard Provisions of the plan provides for payments of \$1,050.00 per month to begin in August 2022. Debtors have failed to provide admissible evidence that the plan is mathematically feasible. The Chapter 13 Trustee's calculations indicate that Debtors' plan will need an additional plan payment of \$796.00 in order for the plan to be feasible as paying unsecured creditors 0% and complete in the proposed 70-month plan term.

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.

November 8, 2022 at 1:00 p.m.

2. [19-90707](#)-B-13 JUAN MUNOZ-GALVEZ AND MOTION TO MODIFY PLAN
[MSN](#)-1 LINDA MUNOZ 9-26-22 [[41](#)]
Thru #4 Mark S. Nelson

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.

3. [19-90707](#)-B-13 JUAN MUNOZ-GALVEZ AND MOTION TO SELL
[MSN](#)-2 LINDA MUNOZ 9-26-22 [[50](#)]
Mark S. Nelson

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

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 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. Debtors propose to sell personal property described as a 2012 Freightliner CAS ("Property").

The Debtors' Declaration states that they received an offer to purchase the Property for \$13,000. Debtors have accepted the offer since they are unable to keep up with the maintenance and repairs on the truck. Debtors believe that the sale price of \$13,000 is equivalent to the fair market value of the Property, taking into consideration its age, mileage, and current condition. Debtors state that they will pay the Trustee \$7,500 from the proceeds of the sale.

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.

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

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

4. [19-90707](#)-B-13 JUAN MUNOZ-GALVEZ AND MOTION FOR COMPENSATION BY THE
[MSN](#)-3 LINDA MUNOZ LAW OFFICE OF LAW OFFICES OF
Mark S. Nelson MARK S. NELSON FOR MARK S.
NELSON, DEBTORS ATTORNEY(S)
9-26-22 [[54](#)]

CONTINUED TO 11/15/2022 AT 1:00 P.M.

Final Ruling

No appearance at the November 8, 2022, hearing is required. The court will issue an order.

5. [22-90311](#)-B-13 JAVIER MEZA AND ALONDRA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 AVILA-DIAZ PLAN BY RUSSELL D. GREER
Simran Singh Hundal 10-19-22 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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 sustain the objection and deny confirmation of the plan.

Debtors have attached Section 7 to the plan and reference "Additional Provisions" at Sections 3.13, 2.01, 3.08 and 3.06. However, Debtors have failed to indicate that the plan includes nonstandard provisions at Section 1.02. A non-standard provision will be given no effect unless this section indicates one is included in Section 7 and it appears in Section 7. Accordingly, Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed August 31, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

6. [20-90616](#)-B-13 ROSEVELT/LATONIA EALY MOTION TO MODIFY PLAN
[JLL](#)-1 Jennifer G. Lee 9-26-22 [[24](#)]

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.

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.

Internal Revenue Service has filed a proof of claim listing a secured portion of \$25,443.99. Debtors' plan does not list this claim. Debtors' amended Schedules I and J, and Statement of Financial Affairs are silent as to treatment of this creditor. Whether this creditor is to be paid, and if it is to be paid, how it is to be paid, impacts whether Debtors will be able to make all payments under the plan and comply with 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.

7. [19-90817](#)-B-13 GARY COOKSEY
[SBW](#)-1 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-21-22 [[192](#)]

BURLINGAME INDUSTRIES, INC.
VS.

ORDER ISSUED 11/04/2022.

Final Ruling

No appearance at the November 8, 2022, hearing is required.

8. [22-90341](#)-B-13 DANA GRAY-SAUCEDA
[SKI](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-4-22 [[13](#)]

AMERICAN CREDIT ACCEPTANCE
VS.
CASE DISMISSED: 10/14/2022

ORDER ISSUED 11/04/2022.

Final Ruling

No appearance at the November 8, 2022, hearing is required.

9. [22-90350](#)-B-13 LARRY FOSTER
[22-9005](#)
FOSTER V. FCI LENDER SERVICES
LLC ET AL

REQUEST FOR JUDICIAL NOTICE
10-19-22 [[16](#)]

CONTINUED TO 12/06/2022 AT 1:00 P.M.

Final Ruling

No appearance at the November 8, 2022, hearing is required. The court will issue an order.

10. [22-90153](#)-B-13 DIANE DOKKHAM MOTION TO CONFIRM PLAN
[CRG](#)-7 Carl R. Gustafson 9-21-22 [[68](#)]
Thru #11

CONTINUED TO 11/15/2022 TO BE HEARD IN CONJUNCTION WITH THE MOTION FOR COMPENSATION, CRG-8.

Final Ruling

No appearance at the November 8, 2022, hearing is required. The court will issue an order.

11. [22-90153](#)-B-13 DIANE DOKKHAM MOTION FOR COMPENSATION BY THE
[CRG](#)-8 Carl R. Gustafson LAW OFFICE OF LINCOLN LAW, LLP
FOR CARL R. GUSTAFSON, DEBTORS
ATTORNEY(S)
9-23-22 [[74](#)]

CONTINUED TO 11/15/2022 AT 1:00 P.M.

Final Ruling

No appearance at the November 8, 2022, hearing is required. The court will issue an order.

12. [20-90473](#)-B-13 DONALD/LOUISE BUIE
[MSN](#)-1 Mark S. Nelson

MOTION TO MODIFY PLAN
9-28-22 [[23](#)]

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.

13. [22-90174](#)-B-13 JUSTIN CARLOTTI
[EJV](#)-1 Eric J. Gravel

MOTION TO AVOID LIEN OF GOLDEN
STATE LUMBER
9-28-22 [[28](#)]

CONTINUED TO 11/15/2022 AT 1:00 P.M.

Final Ruling

No appearance at the November 8, 2022, hearing is required. The court will issue an order.

14. [21-90589](#)-B-13 PAUL/TAMMIE CHOUP
[TMO](#)-2 T. Mark O'Toole

MOTION TO SELL FREE AND CLEAR
OF LIENS
10-13-22 [[30](#)]

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

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 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. Debtors propose to sell the property described as 2200 Giant Oak Lane, Ceres, California ("Property").

Proposed purchaser Kassem Ahmed has agreed to purchase the Property for \$629,999. The proceeds from the sale are sufficient to pay off the mortgage, unsecured creditors at 100%, and provide Debtors with a net profit.

The Chapter 13 Trustee filed an opposition and subsequent motion to dismiss its opposition.

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.

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

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

15. [22-90289](#)-B-13 CORY BRITTON
[RDG](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-17-22 [[19](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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 matter to November 22, 2022, at 1:00 p.m.

The Chapter 13 Trustee filed an objection to confirmation. Debtor filed a response addressing the issues raised by the Trustee and requests a continuance of two weeks to allow the Trustee to review the updated documents.

The Trustee is ordered to file a supplemental reply by Friday, November 18, 2022, as to whether the issues raised have been resolved, and a motion to dismiss its objection if appropriate.

The court will issue an order.

16. [22-90294](#)-B-13 ARTHUR ROBLES AND VALERIA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 JIMENEZ ROBLES PLAN BY RUSSELL D. GREER
Jennifer G. Lee 10-19-22 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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 sustain the objection and deny confirmation of the plan.

First, Debtors' Schedule I lists debtor's wages from his employment at UPS but Debtor has testified that he is now retired and the information on Schedule I is no longer accurate. Debtors have failed to file amended Schedules I and J to accurately reflect their current budget and it cannot be determined whether the Debtors' plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, Debtors have testified to their interest in a 2007 Honda Accord that has not been included in their schedules. Until amended schedules are filed, it cannot be determined whether Debtors' plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

Third, Debtors have testified that they sold a Ford F150 post-petition without obtaining court approval. Debtors will have to file a motion to retroactively approve the sale. Until the necessary motion is heard by the court, it cannot be determined whether Debtors' plan is feasible or proposed in good faith. 11 U.S.C. §§ 1325(a)(3) and (a)(6).

The plan filed August 26, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

17. [22-90190](#)-B-13 ELVIRA ANTUNA
[RDG](#)-2 T. Mark O'Toole

CONTINUED OBJECTION TO CLAIM OF
KINGS CREDIT SERVICES, CLAIM
NUMBER 14-1
9-28-22 [[45](#)]

Final Ruling

This matter was continued from November 1, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 4, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 49, sustaining the objection to claim, shall become the court's final decision. The continued hearing on November 8, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.