

**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 22, 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 22, 2022 at 1:00 p.m.**

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1. [20-90321](#)-B-13 MICHAEL/ALEXIS OKARMUS MOTION TO MODIFY PLAN  
[TLC](#)-1 Tamie L. Cummins 10-18-22 [[66](#)]

**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 the trustee 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.

**November 22, 2022 at 1:00 p.m.**

2.     [22-90224](#)-B-13     SCOTT SALA                             CONTINUED OBJECTION TO  
          [RDG](#)-1             Marc Voisenat                         CONFIRMATION OF PLAN BY RUSSELL  
          Thru #3   D. GREER  
   9-1-22 [[20](#)]

CONTINUED TO 12/20/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE  
CONTINUED MEETING OF CREDITORS SET FOR 12/14/22.

**Final Ruling**

No appearance at the November 22, 2022, hearing is required. The court will issue an  
order.

3.     [22-90224](#)-B-13     SCOTT SALA                             CONTINUED MOTION TO DISMISS  
          [RDG](#)-2             Marc Voisenat                         CASE  
   10-7-22 [[26](#)]

CONTINUED TO 12/20/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE  
CONTINUED MEETING OF CREDITORS SET FOR 12/14/22.

**Final Ruling**

No appearance at the November 22, 2022, hearing is required. The court will issue an  
order.

4. [22-90256](#)-B-13 DWAYNE SIMMONS  
[KLG](#)-1 Arete Kostopoulos

MOTION TO CONFIRM PLAN  
10-17-22 [[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 first amended plan.

First, Debtor's Amended Disclosure of Compensation of Attorney for Debtor at Line 7 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. However, this is contrary to the Rights and Responsibilities signed by Debtors and their attorney. The exclusion of these services is also a violation of Local Bankr. R. 2017-1(a)(1). These services are included in the "No Look Fee" and are they mandatory under the local bankruptcy rules. They should not be excluded.

Second, Debtor's plan is not feasible. Paragraph 3.06 of the plan fails to state the monthly dividend payable to attorney fees. 11 U.S.C. §1325(a)(6).

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

CONTINUED 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.

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' plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 3.05 of Debtors' plan provides for the balance of the attorney fees of \$2,463.00 to be paid through the plan. However, Section 3.06 of Debtors' plan fails to state the monthly dividend payable for those attorney fees.

Second, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's Statement of Financial Affairs at #27 fails to list Debtor's previous businesses that were in operation within the last four years: Shadow Lounge, Inc., and Dab Out Inc.

Third, Debtor's income is insufficient to fund the proposed plan payment based on Debtor's 6-month profit and loss statement.

Fourth, two months prior to the filing of bankruptcy, Debtor purchased a vehicle with a financed amount of \$93,888.91 that requires monthly installment payments of \$1,329.79. Debtor's plan pays a 0% dividend to general unsecured creditors. The purchase of the vehicle appears excessive, unreasonable, and unnecessary for the restructuring of Debtor's debts. The plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

The plan filed August 24, 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.

### 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 dismiss as moot the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior Chapter 7 bankruptcy was discharged on April 11, 2022 (case no. 22-90003). However, the Debtor provides no case law to support the application of § 362(c)(3)(A) to a prior Chapter 7 case that was discharged.

Section 362(c)(3)(A) limits the duration of the automatic stay to the first 30 days after the filing of a debtor's second case under title 11 if:

(3) . . . a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [.]

11 U.S.C. § 362(c)(3) (emphasis added). Code Section 362(c)(3) is unambiguous and explicitly refers to cases filed under chapter 7, 11 or 13 that were pending within the preceding 1-year period but were dismissed. "Dismissal of a title 11 case is provided for under each of the different operative chapters of the Code[.]" Alan N. Resnick and Henry J. Sommer, COLLIER ON BANKRUPTCY ¶349.01[3] (16th ed. 2016). For example, dismissal of a Chapter 7 case may occur only under § 707, which specifies that a court may dismiss a liquidation case only after notice and a hearing and only for cause. 11 U.S.C. § 707. In contrast, a discharge is governed by § 727, which "provides that the court must grant a discharge to a chapter 7 debtor unless one or more of the specific grounds for denial . . . are proven to exist."

Thus, the Bankruptcy Code clearly distinguishes between the terms "dismissal" and "discharge" and they are not interchangeable. Based upon the language of this section, Congress clearly intended to limit the applicability of § 362(c)(3) to specific bankruptcy cases that were dismissed within the preceding 1-year period. *In re Williams*, 390 B.R. 780 (Bankr. S.D.N.Y. 2008). The court finds § 362(c)(3)(A) will not terminate the automatic stay in Debtor's case because she received a discharge, and not a dismissal, in her prior Chapter 7 case. *In re Lovelace*, 2007 WL 187733 at \*1 (Bankr. W.D. Mo. Jan. 16, 2007) ("By its terms, § 362(c)(3)(B) is only applicable if the case which was pending during the 1-year period prior to the filing of the current case was dismissed."). Therefore, the Debtor was not required to file a motion pursuant to § 362(c)(3)(B) because the automatic stay would have continued past 30 days after the filing of her current case pending further action before this court. 11 U.S.C. § 362(c)(3)(A).

The motion to extend automatic stay is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the minutes.

The court will issue an order.