

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: December 5, 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  
Sacramento, California

**December 5, 2023 at 1:00 p.m.**

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1. [20-24704](#)-B-13 JAMES/JUNE GRAY MOTION TO MODIFY PLAN  
[DAB](#)-2 David A. Boone 10-27-23 [[84](#)]

**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.

First, all sums required by the plan have not been paid pursuant to 11 U.S.C. § 1325(a)(2). Debtors are delinquent \$3,040.00 under the proposed plan.

Second, Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee's calculations indicate that Debtors' average plan payment will need to be at least \$4,830.00 beginning November 2023 in order for Debtors' plan to be feasible as paying unsecured creditors 35.00%. Debtors' proposed monthly payment is less than this.

Third, Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment. Without this information, it cannot be determined whether the proposed plan is feasible.

Fourth, Item 6 of Debtors' declaration in support of the motion to modify provides that Debtors' monthly plan payment shall return to \$4,600.00 starting July 2023. However, Debtors' plan proposes plan payments of \$1,100.00 beginning July 2023. Without clarification, it cannot be determined whether Debtors' plan is feasible.

Fifth, Item 5 of the Debtors' motion to modify states that unsecured creditors will receive 100% of their allowed claims, but the current confirmed and proposed plan pay a dividend of 35% to general unsecured claims. Without clarification, it cannot be determined whether the plan is feasible.

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.

**December 5, 2023 at 1:00 p.m.**

2. [23-23205](#)-B-13 ANDREW YADEGAR  
[LGT](#)-1 Lars Fuller

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE LILIAN G. TSANG  
11-6-23 [[21](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed September 14, 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 December 12, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor's Schedule I includes a \$1,000.00 family contribution from his father. Until debtor files a declaration from his father attesting to his willingness and ability to contribute through the duration of the plan, it cannot be determined whether the plan is feasible under 11 U.S.C. § 135(a)(6).

Second, the plan provides for Planet Home Lending as a Class 1 creditor with a postpetition monthly payment of \$5,378.48. However, Debtor claims a monthly home ownership expense of \$3,649.04 and property tax expenses of \$1,729.44 on Schedule J. Since the mortgage expense is included in the plan, this expense on Schedule J is inappropriate.

Third, the plan provides for priority claims in the amount of \$3,039.00. California Department of Tax and Fee Administration has filed Claim No. 5-1 listing a priority portion of \$41,161.45. Debtor's plan is not feasible with the increased priority claim.

Fourth, the plan provides for an unknown creditor in Class 2(b) with a value of \$25,227.00 to be paid at 5.25% interest a monthly dividend of \$420.00. The Debtor has testified that the creditor is Meriwest Credit Union, which is has also been classified as a Class 3 in the plan.

Fifth, a copy of Debtor's 2023 income tax returns are to be provided to the Chapter 13 Trustee.

The plan filed September 14, 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), party in interest shall have until 5:00 p.m. on December 8, 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 December 12, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on December 12, 2023, at 1:00 p.m.

The objection is **CONDITIONALLY SUSTAINED** and **CONTINUED** for reasons stated in the minutes.

The court will issue an order.

3.     [23-23118](#)-B-13   BRIAN HEATH                                 OBJECTION TO CONFIRMATION OF  
          [LGT](#)-1               Pro Se                                     PLAN BY LILIAN G. TSANG  
  11-8-23 [[29](#)]

CONTINUED TO 12/19/23 AT 1:00 P.M. AT THE SACRAMENTO COURTROOM TO BE HEARD AFTER THE  
CONTINUED MEETING OF CREDITORS SET FOR 12/13/23.

**Final Ruling**

No appearance at the December 5, 2023, hearing is required. The court will issue an  
order.

4. [23-22530](#)-B-13 SHA SHAVONDILA PIERSON MOTION FOR RELIEF FROM  
[KKY-1](#) Pro Se AUTOMATIC STAY  
**Thru #5** 11-9-23 [[52](#)]  
OE FEDERAL CREDIT UNION 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 for relief from stay and continue the matter to December 12, 2023, at 1:00 p.m.**

OE Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Dodge Journey (the "Vehicle"). The moving party has provided the Declaration of Elsa Bacaltos to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bacaltos Declaration states that there are three pre-petition payments in default totaling \$1,245.90. Additionally, there are four post-petition payments in default totaling \$1,661.20.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$20,800.02, as stated in the Bacaltos Declaration, while the value of the Vehicle is determined to be \$15,000.00, as stated in Schedules D filed by Debtor.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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, December 8, 2023, 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 an opposition or response is timely filed and served, the court will hear the motion on December 12, 2023, at 1:00 p.m.

- CONTINUED TO 12/19/23 AT 1:00 P.M. AT THE SACRAMENTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 12/13/23.

No appearance at the December 5, 2023, hearing is required. The court will issue an order.

6.     [23-22562](#)-B-13   KENNETH/SOPHIA MOORE                   MOTION TO CONFIRM PLAN  
          [LBF](#)-2               Lauren Franzella                   10-16-23 [[34](#)]

**Final Ruling**

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

### **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 creditor Wilmington Trust, National Association ("Wilmington Trust") and the Chapter 13 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, the plan is not feasible under 11 U.S.C. § 1325(a)(6). The Debtor's plan proposes to reclassify the Class 1 claim of Fay Servicing LLC to be paid outside of the plan as a Class 4 claim. Debtor states in her declaration that she was informed that her application will be approved for relief under the California Relief Program. However, Wilmington Trust states that while it did receive notice on November 7, 2023, from the California Homeowner's Assistance Fund that the Debtor's application is under review, it has not received any funds. Wilmington Trust states that the proposed plan does not provide for a cure in full of pre-petition arrears owed and for ongoing mortgage payments pursuant to 11 U.S.C. §§ 1322(b)(2) and (b)(5).

Second, monthly dividend requires that the Debtor pay \$823.05 per month with the Trustee's compensation and expense. Debtor's plan payment is only \$810.00.00 per month and, therefore, not feasible.

Third, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's amended Schedule I filed on November 1, 2023, shows that Debtor has obtained new employment. The Trustee has requested that Debtor provide copies of all pay advices received to date from the new employer.

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.



8. [23-20383](#)-B-13 LORAINÉ/WINNIEFREDO CONTINUED MOTION TO DISMISS  
[LGT-1](#) MACANDOG CASE  
[Thru #9](#) Peter L. Cianchetta 10-17-23 [[55](#)]

**Final Ruling**

This motion to dismiss case was was continued from October 31, 2023, in order to be heard alongside Debtors' motion to confirm plan, PLC-3. That motion has been denied at Item #9.

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 dismiss case.

Given the Debtors' failure to confirm a plan in this case, the court finds that the Debtors have caused an unreasonable delay that is prejudicial to creditors who are delayed in receiving payments. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

The court will issue an order.

9. [23-20383](#)-B-13 LORAINÉ/WINNIEFREDO MOTION TO CONFIRM PLAN  
[PLC-3](#) MACANDOG 10-25-23 [[59](#)]  
Peter L. Cianchetta

**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 amended plan.

First, the Debtors' motion contains insufficient factual grounds and fails to plead with particularity pursuant to Fed. R. Civ. P. 7(b). 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 amended plan.

Second, the Debtors' declaration explaining how they received and spent \$267,977.00 from a cashed out Southwest pension does not correspond with information on Debtors' schedules. Debtors have had ample opportunity to provide a thorough explanation from the time the Trustee raised its concerns on July 24, 2023. The plan does not appear to be proposed in good faith. 11 U.S.C. § 1325(a)(3).

Third, Paragraph 3.06 of Debtors' plan fails to state the monthly dividend payable for attorney fees. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

Fourth, the Debtors' have failed to provide the Trustee with a copy of their 2022 federal and state income tax returns. Without this documentation, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to Debtors' general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and §1325(b)(1).

Fifth, amended Schedule I filed October 25, 2023, indicates that Joint Debtor is no longer employed. The Debtors' declaration is silent as to why Joint Debtor is unemployed and when unemployment distributions will end. Without further information, it cannot be determined whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

Sixth, Debtor's mailing address of 2368 Pisa Circle, Stockton, California, no longer is a valid address since mail has been returned as undeliverable to the Trustee's office. An explanation by the Debtors and change of address is required.

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.

10. [23-21010](#)-B-13 EARL SPARKES  
[LGT](#)-1 Anh V. Nguyen

CONTINUED MOTION TO DISMISS  
CASE  
11-14-23 [[79](#)]

**Final Ruling**

This matter was continued from November 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 1, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 83, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on December 5, 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.