

**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 12, 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 12, 2023 at 1:00 p.m.

1. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ MOTION TO MODIFY PLAN
 [GSJ](#)-4 Grace S. Johnson 10-27-23 [[121](#)]

Final Ruling

The Debtors failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the motion to modify plan is denied without prejudice.

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

The court will issue an order.

December 12, 2023 at 1:00 p.m.

2. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON MOTION TO CONFIRM PLAN
[BSH](#)-8 Brian S. Haddix 11-3-23 [[124](#)]
Thru #3

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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.

3. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON OBJECTION TO CLAIM OF HARLEY
[BSH](#)-9 Brian S. Haddix DAVIDSON CREDIT CORP., CLAIM
NUMBER 16
11-5-23 [[130](#)]

Final Ruling

By an order filed on December 7, 2023, dkt. 145, the hearing on the objection has been continued to January 9, 2024. The parties report they have reached a compromise and require time to draft a stipulation. Dkt. 143 at 2. No appearance on December 12, 2023, at 1:00 p.m. is required.

The hearing on the objection is ORDERED CONTINUED to January 9, 2024, at 1:00 p.m.

The court will issue an order.

4. [22-20120](#)-B-13 JUAN/MARIA SALAS
[PGM](#)-5 Peter G. Macaluso

MOTION TO MODIFY PLAN
11-7-23 [[69](#)]

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.

5. [19-26922](#)-B-13 MARIAMA SANE MOTION TO REFINANCE
 [JCK](#)-4 Gregory J. Smith 11-1-23 [[67](#)]

Final Ruling

The Debtor has failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the motion to refinance is denied without prejudice.

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

The court will issue an order.

6. [23-23440](#)-B-13 CHRISTINA/RICHARD LOPEZ OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Michael K. Moore PLAN BY LILIAN G. TSANG
11-21-23 [[16](#)]

Final Ruling

The *initial* Chapter 13 Plan filed September 29, 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 19, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtors have failed to provide the Chapter 13 Trustee with 60 days of proof of income for social security, rental property, and foster child support payments received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv). This is required 7 days before the date set for the first meeting of creditors pursuant to Local Bankr. R. 1007-1.

Second, Debtors' plan may fail the liquidation test of 11 U.S.C. § 1325(a)(4). Debtors' schedules list non-exempt assets totaling \$1,659,546.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$1,659,546.00. Based on Debtors' schedules, there are non-priority general unsecured claims totaling \$1,549.00. In order to meet the liquidation test, Debtors' plan must pay 100% plus Federal Judgment Rate of 5.46% to general unsecured claims. Debtors' plan only provides for 100% dividend to general unsecured creditors but no Federal Judgment Rate. Accordingly, Debtors' plan fails the liquidation test.

Third, Debtors' plan is not feasible. Debtors' plan provides for attorney fees in the amount of \$6,375.00 to be paid at a monthly dividend of \$148.00. Pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B), the payment flat fees must be paid in equal monthly installments over the term of the plan. Debtors' plan is a 60-month plan. A monthly dividend of \$106.25 is necessary to pay the claim in full within Debtors' 60-month plan term.

The plan filed September 29, 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 15, 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 Debtors, the Debtors' 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 19, 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 19, 2023, at 1:00 p.m.

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

The court will issue an order.

7. [23-23459](#)-B-13 HOWARD BINDER
[HWW](#)-2 Hank W. Walth
Thru #8

MOTION TO CONFIRM PLAN
11-6-23 [[24](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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 Debtor 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.

8. [23-23459](#)-B-13 HOWARD BINDER
[HWW](#)-3 Hank W. Walth

MOTION TO AVOID LIEN OF CITY OF
STOCKTON
11-27-23 [[33](#)]

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 to avoid lien and continue the matter to December 19, 2023, at 1:00 p.m.**

This is a request for an order avoiding the utility lien of City of Stockton ("Creditor") against the Debtor's property commonly known as 1309 Lloyd Thayer Circle, Stockton, California ("Property"). California Health and Safety Code § 5473.11 provides that from the time of recordation, the lien shall have the force, priority, and effect of a judgment lien. The utility lien was recorded with San Joaquin County on October 18, 2022, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$525,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$512,500.00 on Schedule C. All other liens recorded against the Property total \$140,049.81.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is

avoided subject to 11 U.S.C. § 349(b) (1) (B) .

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 15, 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 19, 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 19, 2023, at 1:00 p.m.

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

The court will issue an order.

Final Ruling

Before the court is a *Motion to Confirm First Amended Chapter 13 Plan* filed by Debtor Linda Granato ("Debtor"). The Chapter 13 Trustee ("Trustee") opposes the motion and objects to confirmation of the First Amended Plan. The Debtor filed a reply.

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h). The motion will be decided on the papers.

The court's decision is to not confirm the first amended plan.

The Trustee objects to confirmation of the first amended chapter 13 plan on grounds that the proposed monthly payment of \$1,010.00 per month in months 1 through 4 and \$1,225.95 thereafter is not sufficient to cover the Trustee's compensation and expense. According to the Trustee's calculations, the monthly payment to include the Trustee's compensation and expense should be \$1,254.00 per month.

Debtor filed a response stating that the proposed plan payment sufficiently covers the Trustee's compensation and expense because when creditors Aarons Inc., listed twice in Class 2, is paid in full in months 33 and 47, there will be an additional \$600.00 in available funds at the end of the plan to be applied toward the Trustee's compensation and expenses. Furthermore, because Aarons Inc. failed to file any proof of claim by the October 11, 2023, deadline for non-governmental units, there is \$1,800.00 (\$30.00 x 60 months = \$1,800.00) available to be applied toward the Trustee's compensation and expenses.

Debtor cites no authority for the proposition that funds from unpaid claims should (or could) be applied to pay the Trustee's compensation at some point later in the case and well after monthly plan payments are received from the Debtor and disbursed to creditors by the Trustee. That is probably because such a process would violate 11 U.S.C. § 1326(b)(2) which states: "*Before or at the time of each payment to creditors under the plan, there shall be paid - ... if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28[.]*" (Emphasis added).

The first amended chapter 13 plan filed October 25, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

10. [23-23485](#)-B-13 ESTELLE YANCEY
[LGT](#)-1 Pro Se
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
11-22-23 [[24](#)]

Final Ruling

The *initial* Chapter 13 Plan filed October 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 December 19, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, the Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv). This is required 7 days before the date set for the first meeting of creditors pursuant to Local Bankr. R. 1007-1.

Second, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor failed to file the correct version of the Chapter 13 plan as required by General Order 18-03, the plan is incomprehensible, and the plan does not provide for a percentage to the general unsecured creditors.

Third, it cannot be determined whether the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4) since there is no allocation to general unsecured creditors in the plan and Schedule C is incomplete.

Fourth, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 3.1 of the plan provides for a monthly contract installment payment of \$2,400.00 to be paid as Class 1 to Selene Finance. Schedule J at #4 also lists the mortgage payment of \$2,400.00 to be paid directly by Debtor. Without clarification, it cannot be determined if Debtor's plan is feasible or pays all income into the plan.

Fifth, it cannot be determined whether Debtor's disposable income received during the applicable commitment period is being applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b). Debtor's Form 122C-1 lists a household size of 4 but Schedule J lists a household size of 2.

Sixth, the Debtor cannot afford plan payments. Debtor's Schedule I and J shows \$12,000.00 of income each month and expenses of \$5,422.00. This results in a net income of \$6,578.00. However, Debtor's plan payment is proposed at \$6,660.45 per month for 60 months. Therefore, the Debtor cannot afford plan payment if the budget is correct.

The plan filed October 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), party in interest shall have until 5:00 p.m. on December 15, 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 19, 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

19, 2023, at 1:00 p.m.

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

The court will issue an order.

11. [23-23485](#)-B-13 ESTELLE YANCEY
[SKI](#)-1 Pro Se
OBJECTION TO CONFIRMATION OF
PLAN BY CREDIT ACCEPTANCE
CORPORATION
11-7-23 [[20](#)]

Final Ruling

The *initial* Chapter 13 Plan filed October 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 overrule as moot the objection by Credit Acceptance Corporation. The plan filed October 16, 2023, is not confirmed for reasons stated at LGT-1.

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

The court will issue an order.

12. [23-23205](#)-B-13 ANDREW YADEGAR
[LGT](#)-1 Lars Fuller

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

Final Ruling

This matter was continued from December 5, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 8, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 31, sustaining the objection to confirmation, shall become the court's final decision. The continued hearing on December 12, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

13. [23-22530](#)-B-13 SHA SHAVONDILA PIERSON
[KKY](#)-1 Pro Se

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-9-23 [[52](#)]

OE FEDERAL CREDIT UNION VS.

Final Ruling

This matter was continued from December 5, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 8, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 78, granting the motion for relief from stay, shall become the court's final decision. The continued hearing on December 12, 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.