

**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: January 18, 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

January 18, 2022 at 1:00 p.m.

1. [21-90345](#)-B-13 BALJEET SINGH MOTION TO CONFIRM PLAN
[DCJ-2](#) David C. Johnston 12-3-21 [[42](#)]

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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, 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, Debtor and Debtor's attorney have filed a Rights & Responsibilities indicating that payments of attorney fees are to be made pursuant to Local Bankruptcy Rule 2016-1(C) or Debtor's plan (sections 3.05 and 3.06). However, no box has been checked in Section 3.05 of the plan. Section 3.05 states that if neither alternative is selected, the attorney shall comply with the latter.

Second, Debtor's plan provides for Bank of New York Mellon as a Class 1 creditor with pre-petition arrears of \$67,939.00 and a post-petition mortgage payment of \$624.00. The Non-Standard Provision of the plan provide for Bank of New York Mellon to receive \$624.000 per month for the ongoing monthly payment commencing in month 5 of the plan. Debtor's Plan does not provide for post-petition arrears to Bank of New York Mellon for the months of August through November 2021. Therefore, Debtor's plan is not feasible. 11 U.S.C. § 1325(a) (6).

Third, Debtor's plan provides for a lump sum payment of \$118,600.00 or amount necessary to pay all claims provided by plan, whichever is greater, to be paid in month 13. While the plan does not reference the source of the lump sum payment, Debtor's declaration in support of the motion states, "I will refinance my home, using the credit of my adult son if necessary, prior to the 13th month of the plan in order to pay all claims provided for in the Plan." Debtor's refinance is speculative and Debtor has not provided evidence of her son's ability or willingness to use his credit for the refinance of Debtor's residence. Consequently, the plan fails to satisfy 11 U.S.C. § 1325(a) (6). See *In re Gavia*, 24 B.R. 573, 574 (9th Cir. BAP 1982); see also *In re Colosi*, 2018 WL 2972342 at *6 (Bankr. D. N.J. June 8, 2018) ("In a situation where a debtor's ability to make payments under the proposed Chapter 13 plan relies on the refinancing of assets or the selling of properties, a court should deny confirmation when it considers the contingency too speculative."); *In re Werden*, 2000 WL 33679431 at *4 (Bankr. D. N.H. Feb. 8, 2000) ("Numerous courts have held that a Chapter 13 plan is not feasible when it envisions the sale or refinancing of significant property sometime in the future when such a sale or refinancing appears highly speculative.").

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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.

2. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI OBJECTION TO CLAIM OF CAVALRY
[MJD](#)-3 Matthew J. DeCaminada SPV 1, LLC, CLAIM NUMBER 1
Thru #3 12-21-21 [[50](#)]

Final Ruling

The objection has been not been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (1), or at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (2). Therefore, the objection to claim is denied without prejudice.

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

The court will issue an order.

3. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI OBJECTION TO CLAIM OF MERRICK
[MJD](#)-4 Matthew J. DeCaminada BANK, CLAIM NUMBER 3
12-21-21 [[54](#)]

Final Ruling

The objection has been not been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (1), or at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (2). Therefore, the objection to claim is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE 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 grant the motion to extend automatic stay.

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on February 2,3 2021, for failure to cure thee default in plan payments or file a modified plan (case no. 18-90360, dkt. 39). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that they fell behind on plan payments because they suffered income loss due to COVID-19. However, Debtor is now back at work and earning about \$12,452 per month. Joint Debtor is not employed. Separately, in the prior bankruptcy while the Debtors were having trouble paying their plan payments, they tried contacting their bankruptcy attorney, Patrick Greenwell, but could not reach him to modify their plan. Debtors later learned that their attorney had been disbarred by the State Bar of California. Debtors have retained different counsel in the present bankruptcy case.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

5. [19-90897](#)-B-13 KATHLEEN ROWE-GLENDON MOTION TO MODIFY PLAN
[PLG-4](#) Steven A. Alpert 12-10-21 [[66](#)]

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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the Debtor failed to file a declaration in support of her motion to modify. A review of the court's docket shows that Debtor filed a declaration on January 4, 2022, in support of her motion to modify. The objection is therefore overruled.

The modified 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.

6. [19-90564](#)-B-13 BRENDA STREET
[BSH](#)-1 Brian S. Haddix

CONTINUED MOTION TO SELL
12-23-21 [[39](#)]

Final Ruling

This matter was continued from January 11, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 14, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 50, granting the motion to sell, shall become the court's final decision. The continued hearing on January 18, 2022, at 1:00 p.m. is vacated.

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

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