

**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: January 21, 2020

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.

2. [18-27902](#)-B-13 PAUL FISHER
[BLG](#)-3 Chad M. Johnson

MOTION TO MODIFY PLAN
12-16-19 [[65](#)]

No Ruling

3. [19-21705](#)-B-13 TOBY TOLEN
[AP-1](#) John G. Downing

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-20-19 [[127](#)]

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling

The motion has been set for hearing on the 28-days 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Subaru Crosstrek (the "Vehicle"). The moving party has provided the Declaration of Robert L. Kammeyer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kammeyer Declaration states that there are 5 pre-petition payments in default totaling \$1,643.00.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$20,616.83, as stated in the Kammeyer Declaration, while the value of the Vehicle is determined to be \$20,000.00, as stated in Schedules A/B and 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.

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

The court will enter a minute order.

4. [18-24310](#)-B-13 MICHAEL BRUNSWICK MOTION TO MODIFY PLAN
[MRI](#)-1 Mikalah R. Liviakis 11-26-19 [[32](#)]

No Ruling

5. [19-24313](#)-B-13 ANN CONRAD
Travis E. Stroud

MOTION TO CONFIRM PLAN
12-17-19 [[57](#)]

DEBTOR DISMISSED: 12/19/2019

Final Ruling

The case having been dismissed on December 19, 2019, the motion to confirm plan is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. [19-24814](#)-B-13 DAVID/SHARON RICETTI
[WLG](#)-2 Nicholas Wajda

MOTION TO CONFIRM PLAN
12-13-19 [[36](#)]

No Ruling

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny the motion to extend automatic stay.

Debtor 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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 19, 2019, due to delinquency in plan payments and (case no. 19-20722, dkt. 30). 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 Debtor states her bankruptcy is filed in an effort to catch up with her mortgage arrears. Debtor states that her pervious bankruptcy had failed because her daughter, who contributes to the household income, had lost her job. Since the prior case was dismissed, Debtor's daughter has gained new employment and will be able to contribute financially again.

Although the Debtor has demonstrated a change in circumstances, the Debtor does not provide any declaration from her daughter stating that she is able and willing to contribute to the Debtor's household income to ensure that this bankruptcy succeeds.

Therefore, the Debtor has not 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 denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. [19-23220](#)-B-13 EDWARD MEDINA
[HDR-1](#) Harry D. Roth

MOTION TO MODIFY PLAN
12-12-19 [[31](#)]

No Ruling

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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 Debtor has 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 ruling appended to 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 enter a minute order.

10. [19-24237](#)-B-13 ELENA PEREZ GONZALEZ OBJECTION TO CONFIRMATION OF
Thru #11 Peter G. Macaluso PLAN BY CITIBANK, N.A.
1-6-20 [[92](#)]

No Ruling

11. [19-24237](#)-B-13 ELENA PEREZ GONZALEZ MOTION TO CONFIRM PLAN
[PGM-2](#) Peter G. Macaluso 12-11-19 [[82](#)]

No Ruling

12. [19-26151](#)-B-13 CHAD/MARIAN VAITAI
[MAC](#)-1 Marc A. Caraska

MOTION TO CONFIRM PLAN
12-6-19 [[21](#)]

No Ruling

13. [19-26951](#)-B-13 FRANK/SYLVIA FERNANDEZ OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Mark A. Wolff PLAN BY DAVID P. CUSICK
12-20-19 [[26](#)]

CONTINUED TO 2/04/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 1/23/2020.

Final Ruling

No appearance at the January 21, 2020, hearing is required. The court will enter a minute order.

14. [19-26654](#)-B-13 THERESA WALKER
[DPC](#)-1 Colby D. LaVelle

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
11-21-19 [[16](#)]

No Ruling

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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 ruling appended to 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 enter a minute order.

16. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS MOTION TO CONFIRM PLAN
[MMN](#)-3 MONGALO ROBLETO 12-3-19 [[69](#)]
Thru #17 Michael M. Noble

No Ruling

17. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS OBJECTION TO CLAIM OF REALTIME
[MMN](#)-4 MONGALO ROBLETO SOLUTIONS INC, CLAIM NUMBER 7
Michael M. Noble 12-3-19 [[63](#)]

No Ruling

18. [14-27284](#)-B-13 ANDREW/ROWENA CHAMP
[SC-1](#) Diana J. Cavanaugh

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-24-19 [[153](#)]

BRECKENRIDGE PROPERTY FUND
2016, LLC VS.

Final Ruling

The motion has been set for hearing on the 28-days 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant annulment of the automatic stay.

Breckenridge Property Fund 2016, LLC ("Movant") seeks to determine that no stay applies with respect to real property commonly known as 6137 Ogden Nash Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Olivia Reyes to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Reyes Declaration states that Movant was the high bidder at a nonjudicial foreclosure sale of the Property conducted per the court's order at docket 75. Movant seeks annulment since it had filed an unlawful detainer, obtained judgment, and a writ of possession prior to being informed of this instant bankruptcy.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant had purchased the real property on September 10, 2019, following a regularly noticed and properly conducted nonjudicial foreclosure sale. Thereafter, Movant commenced an unlawful detainer action on October 1, 2019. Movant obtained a judgment by default on November 18, 2019, and a writ of possession was issued on November 19, 2019. Movant did not learn of this bankruptcy filing until November 20, 2019.

Movant has provided a properly authenticated/certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 158, exh. 1. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

Annulment is particularly appropriate in this case given the original creditor's authority to proceed with a foreclosure sale of the Property, Movant's (as a third-party) purchase of the Property at a properly-conducted foreclosure sale, Movant's prosecution of an unlawful detainer action to judgment without notice or knowledge of this case, the expense that Movant incurs while the Debtors unlawfully remain in possession of the Property without payment to Movant, the expense and delay that Movant would incur if required to restart unlawful detainer proceedings, Movant's stay of all

action in the unlawful detainer proceedings upon learning of this case, and the Debtors' apparent failure to inform Movant of this case during the unlawful detainer proceedings. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment).

The court shall issue an order annulling the automatic stay in its entirety as to Movant and Movant's actions in the state court unlawful detainer so that all such post-petition actions taken by Movant, its agents, representatives, members, directors, officers, and employees arising in or related to the state court unlawful detainer proceedings are deemed to not have violated the automatic stay. This includes, but is not limited to, the following: services of the notice that occurred on September 24, 2019; the filing of the state court unlawful detainer that occurred on October 23, 2019; the entry of default judgment that occurred on November 18, 2019; and the issuance of the writ that occurred on November 19, 2019.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

19. [18-25088](#)-B-13 DANIEL MASSEY
[PLC](#)-3 Peter L. Cianchetta

MOTION TO CONFIRM PLAN
12-6-19 [[97](#)]

No Ruling

20. [19-26492](#)-B-13 SATURNINO PIZARRO
[DPC-1](#) Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-9-19 [[36](#)]

Tentative Ruling

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a) (2). California Code of Civil Procedure §703.140(a) (2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on December 16, 2019. Dkt. 44. The Trustee's objection is overruled and the claimed exemptions are allowed..

The objection is ORDERED OVERRULED and the claimed exemptions ALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

21. [19-21999](#)-B-13 CRAIG MACEY
[MJD](#)-6 Matthew J. DeCaminada

MOTION TO MODIFY PLAN
12-17-19 [[110](#)]

No Ruling

22. [19-26941](#)-B-13 MICHAEL WYCLIFFE AND CONTINUED OBJECTION TO
[DPC](#)-1 REBECCA WEAVER CONFIRMATION OF PLAN BY DAVID
Pro Se P. CUSICK
12-17-19 [[17](#)]

CONTINUED TO 3/03/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 2/27/2020.

Final Ruling

No appearance at the January 21, 2020, hearing is required. The court will enter a minute order.