

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 27, 2018 at 1:00 p.m.

1. [18-26358-E-13](#) TANESHIA WRAY
Pro Se

COPY OF LETTER FROM TANESHIA
LANNETTE WRAY RE :
RECONSIDERATION OF MOTION TO
EXTEND AUTOMATIC STAY
11-19-18 [\[31\]](#)

TO BE HEARD IN DEPARTMENT B,
COURTROOM 32

**No Telephonic Appearance Permitted for Taneshia Lannette
Wray**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

The court specially set the hearing for November 27, 2018. Order, Dckt. 32. The Order setting the hearing on the Motion required Debtor serve a copy of the Order on the agents of the Creditor conducting a foreclosure sale on Debtor's property. *Id.*

The Reconsideration Of Motion To Extend Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer 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. At the hearing -----.

The Reconsideration Of Motion To Extend Stay is ~~XXXXXXXXXXXXXXXXXX~~.

On October 9, 2018, Taneshia Lannette Wray ("Debtor") commenced this Chapter 13 case. This is not Debtor's first recent Chapter 13 case. Her other prior recent cases and the results thereof are summarized below:

18-21233 Chapter 13 Case Atty: Kristy Hernandez, Esq.	Filed: March 2, 2018	Dismissed: July 13, 2018
	Case was dismissed due to Debtor making no plan payments and not prosecuting an amended plan. 18-21233; Civil Minutes, Dckt. 6.	
17-26138 Chapter 13 Case <i>In Pro Se</i>	Filed: September 15, 2017	Dismissed: February 28, 2018
	Case Dismissed due to Debtor failing to prosecute an amended plan. 17-26138; Order, Dckt. 37. Debtor made no Plan payments to the Chapter 13 Trustee in the case. <i>Id.</i> ; Trustee's Final Report, Dckt. 40	

Debtor having two prior cases pending and dismissed in the past year, no automatic stay went into effect upon the filing of this current case. 11 U.S.C. § 362(c)(4)(A). When stay has not gone into effect pursuant to 11 U.S.C. § 362(c)(4), a party in interest may request within 30 days of filing that the stay take effect as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B).

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, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Correspondence From Debtor

On October 9, 2018, Debtor filed a letter with the court. Dckt. 9. In the letter, Debtor states the following:

I Taneshia Wray, am respectfully requesting a motion to stay in my current Chapter 13 case. This request is due to me having new employment which could lead to future retirement and my desire to hire an attorney to assist with this current case. I desire to make this current case a solution to my financial difficulties.

The court having reviewed the letter “requesting a motion,” it appears that Debtor believed the court would generate pleadings for Debtor, there being no motion and no supporting evidence, the court issued an order for a Status Conference in this case so that the court could address issues with the Debtor in open court. Order, Dckt. 10. As noted in the court’s order, this would afford Debtor the opportunity to get her counsel “on board” and at the hearing.

The court conducted the Status Conference, however, Debtor failed to appear at the Status Conference to address these issues for the court. Civil Minutes, Dckt. 29.

On November 19, 2018, Debtor delivered a second letter to the court. Dckt. 30. In this second letter Debtor states:

I am respectfully requesting a reconsideration of my prior request for an automatic stay for my current case #18-26538. I was unable to attend the November 14, 2018 case conference due to me filing a workers compensation claim and sustaining a work related injury on October 25, 2018 at my worksite.

While phrased as a “reconsideration,” there has not yet been a motion supported by evidence presented to the court.

Debtor then filed a third letter with the court on November 19, 2018. Dckt. 31. In this third letter Debtor states:

Today on November 19, 2018, I requested reconsideration of my prior request for an automatic stay for my current case # 18-26358. I am requesting a shorten time to be heard for this request and I am requesting to be heard today on November 19, 2018. I have a foreclosure sale date on my property for tomorrow November 20, 2018 and this is an urgent matter.

To the extent that the third letter is treated as a motion for imposition of the automatic stay, it fails to state grounds and is not supported by any evidence.

Review of Chapter 13 Plan

Debtor’s Chapter 13 Plan requires monthly plan payments of \$3,040.57 a month, commencing with the first payment due by November 25, 2018. Dckt. 24. From this Debtor states that she will make the current monthly mortgage payment of \$1,400, and a monthly payment of \$1,400 to cure an \$84,000 pre-petition arrearage. Plan ¶3.07. Debtor also appears to have a \$240.57 tax obligation to be paid (incorrectly listing it in ¶4.01 of the Plan.

November 19, 2018 Order Setting Hearing

On November 19, 2018 the court issued an Order specially setting a hearing for Debtor’s Motion on November 27, 2018. Order, Dckt. 32. In issuing its Order, the court observed that Debtor does not have the personal ability to prosecute this case in federal court, not being able to formulate motions, present evidence, or set matters for hearing. The court further found Debtor had not made a showing that her present case is filed in good faith, with the exception of Debtor agreeing to her first proposed plan payment of \$3,040.57.

The Order imposed the automatic stay in this case on an interim basis for all purposes and persons, pending further order of this court. The court further ordered that Debtor Taneshia Lannette Wray appear at the November 25, 2018 hearing (no telephonic appearance permitted) and present evidence of payment having been made on or before November 25, 2018 of the November 2018 plan payment in the amount of \$3,040.57.

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXX**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Reconsideration Of Motion To Extend Stay filed by Debtor Taneshia Lannette Wray (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXXXXXXXXXXXXXXXXXXXXX**.