

**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 7, 2025**

**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

**January 7, 2025 at 1:00 p.m.**

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1.     [24-22621](#)-B-13     SHAYLA JARRAYL BARNES     MOTION TO CONFIRM PLAN  
          [PGM](#)-2             Peter G. Macaluso             11-18-24 [[53](#)]

**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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

**January 7, 2025 at 1:00 p.m.**

2. [24-24435](#)-B-13 MICHAEL KAWASAKI CONTINUED OBJECTION TO  
[LGT](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
11-19-24 [[14](#)]

**Final Ruling**

The case having been dismissed on December 26, 2024, the continued objection to confirmation of plan is overruled as moot.

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

The court will issue an order.

3. 24-24537-B-13 HARPREET SINGH  
LGT-1 Kristy A. Hernandez

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
11-22-24 [[28](#)]

CONTINUED TO 1/28/25 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 1/22/25.

## Final Ruling

No appearance at the January 7, 2025, hearing is required. The court will issue an order.

4. [24-24740](#)-B-13 SAMIR KHAN  
[LGT](#)-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
12-10-24 [[16](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed October 22, 2024, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

5. [24-24746](#)-B-13 ALFRED SALDANA OBJECTION TO CONFIRMATION OF  
[LGT](#)-1 Peter G. Macaluso PLAN BY LILIAN G. TSANG  
**Thru #6** 12-11-24 [[23](#)]

**Final Ruling**

Debtor Alfred Saldana, having filed a response to the Chapter 13 Trustee's objection to confirmation and stating that the plan is not confirmable, the objection to confirmation is sustained. The matter is removed from the calendar.

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

The court will issue an order.

6. [24-24746](#)-B-13 ALFRED SALDANA OBJECTION TO CONFIRMATION OF  
[USA](#)-1 Peter G. Macaluso PLAN BY UNITED STATES  
DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT  
12-11-24 [[26](#)]

**Final Ruling**

Debtor Alfred Saldana, having filed a response to the United States Department of Housing and Urban Development's objection to confirmation and stating that the plan is not confirmable, the objection to confirmation is sustained. The matter is removed from the calendar.

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

The court will issue an order.

7. [24-24946](#)-B-13 BILLY SPURGIN  
[PGM](#)-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
11-14-24 [[14](#)]

### **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 by creditors Nationstar Mortgage LLC ("Nationstar") and JPMorgan Chase Bank National Association ("JPMorgan Chase"), and a response was filed by debtor Billy Spurgin ("Debtor").

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 first amended plan.

Nationstar and JPMorgan Chase each hold a deed of trust secured by Debtor's residence. Each creditor filed separate oppositions to confirmation on grounds that the plan does not propose to cure pre-petition arrearages.

Debtor filed a reply stating that he does not believe any arrears are owed having recently entered into a loan modification. Debtor requests a continuance to allow proof of claims to be filed.

A review of the courts docket shows that while Nationstar has not yet filed a proof of claim, JPMorgan Chase has filed proof of claim 3-1. At a minimum, the plan is not confirmable because it does not provide for the full payment of the arrearage owed to JPMorgan Chase and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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.

8. [24-24548](#)-B-13 MARISA HALL CONTINUED OBJECTION TO  
[LGT](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
11-22-24 [[21](#)]

CONTINUED TO 2/25/25 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 2/19/25.

**Final Ruling**

No appearance at the January 7, 2025, hearing is required. The court will issue an order.



9. [24-23868](#)-B-13 JAMIEROSE CARANAY AND MOTION TO CONFIRM PLAN  
[SLH](#)-1 HERMIE GERALD TUNGOL 11-7-24 [[26](#)]  
Seth L. Hanson

### **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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

10. [24-24569](#)-B-13 GARY DIETRICH  
[LGT](#)-1 Eric John Schwab

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
11-27-24 [[12](#)]

**Final Ruling**

This matter was continued from December 17, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, December 20, 2024. Debtor filed a timely response conceding that the Chapter 13 Trustee's objections to this plan are valid, and anticipates filing a new plan and motion to confirm it.

Therefore, the court's conditional ruling at dkt. 15, sustaining the objection, shall become the court's final decision. The continued hearing on January 7, 2025, at 1:00 p.m. is vacated.

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

The court will issue an order.

11. [24-24870](#)-B-13 CHRISTIAN BERNAL OBJECTION TO CONFIRMATION OF  
[LGT](#)-1 BUSTAMANTE PLAN BY LILLIAN G. TSANG  
Peter G. Macaluso 12-6-24 [[16](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankr. R. 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankr. R. 9014-1(f)(1)(C). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that Schedule J includes an impermissible car expense of \$160.00.

Debtor filed a response stating that he has filed the amended schedule to correct the error and that he is current on plan payments.

Given the aforementioned, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 29, 2024, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

12. [24-21374](#)-B-13 SKYLER/HEATHER BROWN  
[MRL](#)-1 Candace Y. Brooks

MOTION TO MODIFY PLAN  
11-15-24 [[19](#)]

### **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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

13. [24-24774](#)-B-13 WAJAHAT KHAN  
[LGT](#)-1 Gregory J. Smith

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
12-5-24 [[12](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed October 23, 2024, 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. Multiple responses and replies were filed by debtor Wajahat Khan ("Debtor") and the Chapter 13 Trustee ("Trustee").

The court's decision is to **continue the hearing to January 14, 2025, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtor has not filed amended Form 122C-1 and/or amended Form 122C-2 to take out a one-time payout. The most recent filed Form 122C-1 and Form 122C-2 are still the original forms, filed as dkt. 1. If Debtor agrees to take out the one-time payout, amended forms need to be filed since an accurate projected disposable income cannot be determined.

The plan filed October 23, 2024, 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), any party in interest shall have until 5:00 p.m. on January 10, 2024, 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 January 14, 2025, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on January 14, 2025, at 1:00 p.m.

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

The court will issue an order.

14. [24-24685](#)-B-13 ROSELYN SHANKAR OBJECTION TO CONFIRMATION OF  
[LGT](#)-1 Peter G. Macaluso PLAN BY LILIAN G. TSANG  
**Thru #15** 12-12-24 [[22](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankr. R. 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankr. R. 9014-1(f)(1)(C). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that Form 122C includes net amounts and not gross amounts received by Debtor and that not all income was listed. Without this information, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 325(b).

Debtor filed a response stating that she has filed amended Form 122C-1 to resolve the Trustee's concerns.

Given the aforementioned, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 17, 2024, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

15. [24-24685](#)-B-13 ROSELYN SHANKAR MOTION TO VALUE COLLATERAL OF  
[PGM](#)-1 Peter G. Macaluso TIDEWATER FINANCE COMPANY  
12-5-24 [[16](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). 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 value the secured claim of Tidewater Finance Company at \$8,126.00.

Debtor moves to value the secured claim of Tidewater Finance Company ("Creditor"). Debtor is the owner of a 2011 Lexus RX 350 Sport ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,126.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R.

Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 1-1 filed by Tidewater Finance Company is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on April 17, 2022, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,705.16. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$8,126.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

16. [24-21686](#)-B-7 JAYESH PATEL  
[24-2170](#) NAR-1  
DREFS V. PATEL ET AL  
DEBTOR DISMISSED: 11/20/24

MOTION TO SET ASIDE DISMISSAL  
OF CASE  
12-4-24 [[19](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has reviewed the motion. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. The court has determined that oral argument will not assist in the decision-making process or resolution of the amended motion. See Local Bankr. R. 9014-1(h); *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, \*1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues these findings of fact and conclusions as a Final Ruling. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to grant the motion to vacate dismissal of the adversary proceeding.

Counsel for plaintiff Allen Drefs ("Counsel") seeks to vacate the court's order dismissing adversary Drefs v. Patel et al. The adversary was dismissed on November 20, 2024, for failure to file a certificate of service of the summons and complaint, and for failure to respond to the court's Notice of Intent to Dismiss Adversary Proceeding. Counsel contends that he did not receive bankruptcy notices via the court's Electronic Filing System, where he typically receives notices, and instead notices were sent to address 4568 Feather River Drive, Suite A, Stockton, California ("Feather River"), which is not an address where Counsel receives mail. Generally, mail sent to the Feather River location is forwarded to Counsel's mailing address at PMB 270, 4719 Quail Lakes Drive, Suite G, Stockton, California, but in many cases the mail is returned to the sender since Counsel has not utilized the Feather River address for some time.

Counsel did not receive the Summons, the Notice of Intent to Dismiss, nor the Order Dismissing the Adversary Proceeding. In fact, Counsel states that the only documents on the docket that Counsel did receive were the conformed copies of the Adversary Complaint and the Adversary Cover Sheet, which were received via the Electronic Filing System. Counsel is still unclear as to how or why these other documents were not received in the same manner.

Since Counsel did not receive notification through the Court's Electronic Filing System, Counsel is requesting that the Order Dismissing the Adversary Proceeding be set aside or the Court reconsider its Order Dismissing the Adversary Proceeding based on counsel's mistake, inadvertence, and excusable neglect pursuant to Federal Rule of Civil Procedure 60(b).

### **Discussion**

Federal Rule of Civil Procedure 60(b)(1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. Vacating dismissal will not delay proceedings since Counsel is prepared to reissue and immediately serve the summons on debtor Jayesh Patel ("Defendant"). Dismissal also resulted from an oversight outside the control of Counsel, who did not receive any of the court's notices that were sent to an old mailing address. And there is no indication of any bad faith by Counsel.



Therefore, the Counsel's motion to vacate the order dismissing this Chapter 13 case will be granted, the dismissal order at dkt. 14 vacated, and this adversary proceeding ordered reinstated.

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

The court will issue an order.

17. [24-24786](#)-B-13 FRANCISCO VIVANCO  
[LGT](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
12-6-24 [[24](#)]

CONTINUED TO 2/25/25 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED  
MEETING OF CREDITORS SET FOR 2/19/25.

**Final Ruling**

No appearance at the January 7, 2025, hearing is required. 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's decision is to continue the matter to January 14, 2024, at 1:00 p.m.

Debtor seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on May 23, 2024, due to delinquency in plan payments (case no. 23-21833, dkt. 24). The Debtor's second bankruptcy case was dismissed on October 27, 2024, after Debtor failed to pay installments according to the Order Approving Payment of Filing Fee in installments. (case no. 24-23182, dkt. 43).

### **Discussion**

Debtor's request to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3) is inappropriate given that this is Debtor's third, and not second, bankruptcy pending in the past 12 months. Instead, the appropriate relief that should be sought is 11 U.S.C. § 362(c)(4)(B).

Rather than deny the motion as one to *extend* the automatic stay, the court will construe the motion as one filed under 11 U.S.C. § 362(c)(4) to *impose* the automatic stay. So construed, the request is timely having been made within 30 days of the petition date of this new (third) case. See 11 U.S.C. § 362(c)(4)(B). The court will require the Debtor to file supplemental documentation by 5:00 p.m., January 10, 2025, explaining why the court should impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B).

There is no automatic stay in effect in this case unless and until imposed by order of this court. See 11 U.S.C. §§ 362(c)(4)(A)(ii), 362(c)(4)(c).

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's decision is to continue the matter to January 14, 2024, at 1:00 p.m.<sup>1</sup>

Debtor seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 1, 2024, for failure to cure delinquent plan payments (case no. 22-22222, dkt. 114). 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). This motion was filed and will be heard within 30 days of the filing of the instant chapter 13 case.

### 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). This court does not utilize the *Sarafoglou* factors as urged by the Debtor. See *In Re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006).

Debtor states the instant case was filed on December 16, 2024, in order to stop a foreclosure sale scheduled the next day. The Debtor was attempting to complete a loan modification but was denied on December 16, 2024, since the combined principal and interest payment under the proposed loan modification would be higher than the existing payment Debtor was making. Debtor's Schedules I and J reflect that he has sufficient income to cover all necessary obligations in addition to the proposed Chapter 13 plan. This is attributed to the changed circumstances of his son moving into the property and providing financial assistance. There is no indication that the Debtor engaged in any type of scheme or other operation to abuse the bankruptcy process.

While it appears that there are changed circumstances based on Debtors' schedules, no declaration by the son has been filed indicating his willingness to provide financial contributions during the life of the plan. The court will permit supplemental declarations to be filed by 5:00 p.m., January 10, 2025, and the matter will be continued to January 14, 2024, at 1:00 p.m.

The court will issue an order.

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<sup>1</sup>This chapter 13 case was filed on December 16, 2024. Dkt. 1. The continued hearing date of January 14, 2025, remains within the 30-day period for the "hearing to be completed before the expiration of the 30-day period [from the petition date]." See 11 U.S.C. § 362(c)(3)(B).