

**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 16, 2024

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 16, 2024 at 1:00 p.m.

1. [23-90607](#)-B-13 KRISTOPHER COOPER MOTION TO EXTEND AUTOMATIC STAY
[DCJ](#)-1 David C. Johnston 1-2-24 [[11](#)]

Tentative 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 grant the motion to extend the 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 8, 2023, due to delinquency in plan payments and failure to confirm a plan (case no. 23-90326, dks. 91, 101). 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 presumption that the present case was filed in bad faith does not apply where the prior case was dismissed because of the failure to file documents if such failure was due to the negligence of a debtor's attorney. See 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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 that she had initially filed her prior case pro se but thereafter retained attorney Flor A. Tataje. Ms. Tataje was negligent in her representation of Debtor because she filed multiple plans but failed to schedule confirmation hearings for two of them. The Debtor did not sign any of the plans and was unaware of the requirement to make payments to the Chapter 13 Trustee of more than \$6,000 per month. Ms. Tataje also failed to appear at the Debtor's meeting of creditors. Debtor's circumstances have changed in the present case since he has retained new counsel.

The Debtor has 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.

January 16, 2024 at 1:00 p.m.

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.

2. [22-90429](#)-B-13 MARY LYNN LEBOW
[23-9016](#) SC-3
BRECKENRIDGE PROPERTY FUND
2016, LLC V. LEBOW ET AL

MOTION FOR REMAND
12-14-23 [[22](#)]

Final Ruling

MATTER VACATED. THE COURT ENTERED AN ORDER ON 1/08/24 GRANTING THE MOTION FOR REMAND TO STANISLAUS COUNTY SUPERIOR COURT.

3. [23-90522](#)-B-13 PATRICIA OCHSNER
[LGT](#)-1 David C. Johnston

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
12-18-23 [[20](#)]

Final Ruling

The *initial* Chapter 13 Plan filed November 6, 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 January 23, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.

First, the Debtor failed to provide the Chapter 13 Trustee with 60 days' proof of income for social security and Door Dash 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 Debtor failed to provide the Trustee with a copy of Debtor's 2022 Federal and State income tax returns. Without this documentation, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

Third, the Debtor's plan is not feasible. Debtor's plan provides for attorney fees in the amount of \$3,000.00 to be paid at a monthly dividend of \$100.00. Pursuant to Local Bankr. R. 2016-1(c)(4)(B), the payment must be paid in equal monthly installments over the term of the plan. Debtor's plan is a 60-month plan and a monthly dividend of \$50.00 is necessary to pay the claim in full within the plan term.

Fourth, the Debtor's ability to make the plan payment of \$2,210.00 for 60 months is contingent upon a monthly contribution of \$1,200.00 as listed on Debtor's Schedule I at line 8h. The Debtor has failed to provide the Trustee with an explanation or declaration from the contributing parties stating the ability and willingness to financially assist Debtor.

The plan filed November 6, 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 January 19, 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 23, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on January 23, 2024, at 1:00 p.m.

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

The court will issue an order.