

**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: February 7, 2023

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.

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

February 7, 2023 at 1:00 p.m.

1. [23-90006](#)-B-13 MARK FREEBORN MOTION TO EXTEND AUTOMATIC STAY
[SSH-1](#) Simran Singh Hundal 1-16-23 [9]

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.

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 October 24, 2022, for failure to file documents (case no. 22-90365, dkt. 15). 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 that his prior case failed because he followed the advice of a company that was helping him with his pending foreclosure. Debtor was advised to file the prior chapter 13 simply to postpone the foreclosure and then to let the case dismiss. Debtor asserts that his circumstances have changed because he has now retained counsel to aide him in this current bankruptcy and will have the necessary guidance to successfully complete this case. Additionally, Debtor contends that his filed Schedules I and J show his ability to maintain plan payments. Debtor maintains that this case was filed in good faith and cause exists to extend the stay.

February 7, 2023 at 1:00 p.m.

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.

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.

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.

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 third amended plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that Debtors' plan does not provide for a dollar amount of priority claims at Section 3.12(c) and instead lists the estimated priority claim total as "disputed." This same issue was raised by the Trustee in its opposition to Debtors' motion to confirm first and second amended plans. To date, the Debtors have not filed objections to claims in the case.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

This case was filed on January 17, 2022, which means it has been pending for over one year without a confirmed plan. The Debtor shall have until February 14, 2023, to file, set, and serve a fourth amended plan that, at a minimum, includes an estimated dollar amount of priority claims at Section 3.12(c). If the Debtor fails to comply with this deadline, or if the Debtor files another plan without an estimated dollar amount at Section 3.12(c), this case may be dismissed on the Chapter 13 Trustee's ex parte application for unreasonable delay by the Debtor which is prejudicial to creditors. See 11 U.S.C. § 1307(c)(1); *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (9th Cir. BAP 2011) ("A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute [the required cause] under § 1307(c)(1)).".

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

The court will issue an order.

3. [22-90426](#)-B-13 KENDALL/CYNTHIA MILLER OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Brian S. Haddix PLAN BY RUSSELL D. GREER
1-17-23 [[23](#)]

CONTINUED TO 2/14/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/08/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an order.

4. [22-90428](#)-B-13 MERCEDES HERENAS OBJECTION TO CONFIRMATION OF
[RAS](#)-1 Pro Se PLAN BY WELLS FARGO BANK,
Thru #5 NATIONAL ASSOCIATION
1-18-23 [[21](#)]

CONTINUED TO 2/28/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/22/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an
order.

5. [22-90428](#)-B-13 MERCEDES HERENAS OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Pro Se PLAN BY RUSSELL D. GREER
1-18-23 [[24](#)]

CONTINUED TO 2/28/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/22/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an
order.

6. [21-90229](#)-B-13 CHRISTOPHER/REBECCA MOTION TO CONTINUE CASE
[SLH](#)-1 BRAILSFORD ADMINISTRATION, SUBSTITUTE
Seth L. Hanson PARTY, AS TO DEBTOR
1-18-23 [[34](#)]

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 continue the matter to February 14, 2023, at 1:00 p.m.

Joint Debtor Rebecca Brailsford gives notice of the death of her husband Debtor Christopher Brailsford and requests the court to substitute Rebecca Brailsford in place of Christopher Brailsford for all purposes within this Chapter 13 proceeding. However, a certificate of death was not filed to accompany this motion. The court will continue the matter to February 14, 2023, at 1:00 p.m. to provide Joint Debtor additional time to file this supporting documentation prior to the continued hearing. The certificate of death shall be filed by February 14, 2023, prior to the hearing.

The court will issue an order.

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.

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 third amended plan.

First, the plan provides for total additional attorney fees of \$5,700.00 of which \$1,651.00 was paid prior to filing and an additional \$4,049.00 is due through the plan. An Application for Additional Fees was granted on November 15, 2022, in the amount of \$5,700.00. Therefore, it appears the number presented in the plan at Section 3.05 is in error. The Debtor shall submit a declaration clarifying that the balance of attorney fees due through the plan is \$5,700.00 pursuant to the order at dkt. 112 granting the Application for Additional Fees.

Second, the Debtor proposes a 60-month plan but payments to Note Serv Center and Stanislaus County will exceed this payment period. The plan provides for servicer Note Serv Center as a Class 2 claim in the amount of \$51,704.00 to be paid at 6.5% interest a monthly dividend of \$900.00. This will take 69 months to pay. Additionally, the plan provides for the Stanislaus County as a Class 2 claim in the amount of \$5,000.00 to be paid at 18% interest a monthly dividend of \$100.00. Stanislaus County has filed a proof of claim with a secured amount of \$5,684.38. This will take 129 months to pay. 11 U.S.C. § 1325(a)(6).

Third, Debtor's income to fund the plan relies on regular contributions from her father. The Debtor has not filed a declaration from her father establishing his willingness and ability to make the contributions.

Fourth, the plan provides for Class 2 servicer Note Serv Center/creditor Marilyn M. Combs an interest rate of 6.5%. However, creditor Marilyn M. Combs opposes the proposed interest rate and requests an interest rate of 9.0%. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., February 4, 2023, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 7.75%. To set the appropriate rate, courts utilizes the "formula approach" of *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), which takes into consideration the national prime rate and adjusts it for a greater risk of default posed by a debtor. Courts have typically adjusted the interest rate by 1% to 3%. The court finds that an interest rate of 8.75% to be appropriate. If either party disputes the interest rate, it may request an evidentiary hearing in either the subsequent motion to confirm or any opposition/objection thereto. The request shall appear in the caption of the document in which it is made. If an evidentiary hearing is requested, the document(s) shall also identify the interest rate expert(s). The court may also appoint its own interest rate expert, Fed. R. Evid. 706(a), and if it does it may allocate the expert's compensation among the parties as appropriate. Fed. R. Evid. 706(c). All parties, attorneys, and witnesses will be required to appear in person for the evidentiary hearing. Telephonic and/or video appearances will not be permitted.

Further, this case was filed May 22, 2022, which means by the time a motion to confirm a fourth amended plan is heard it will have been pending for nearly one year without a confirmed plan. The Debtor shall therefore have until February 14, 2023, to file, set, and serve a fourth amended plan. If the Debtor fails to comply with this deadline this

case may be dismissed on the Trustee's ex parte application.

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. [22-90256](#)-B-13 DWAYNE SIMMONS
[KLG-2](#) Arete Kostopoulos

MOTION TO CONFIRM PLAN
1-3-23 [[40](#)]

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. 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.

9. [20-90163](#)-B-13 MARCELO AGUILAR
[TMO](#)-1 T. Mark O'Toole

MOTION TO MODIFY PLAN
1-3-23 [[43](#)]

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 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 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.

10. [22-90395](#)-B-13 DANIELLE SCAPARRO PALM CONTINUED OBJECTION TO
[APN](#)-1 T. Mark O'Toole CONFIRMATION OF PLAN BY THE
Thru #11 BANK OF NEW YORK MELLON
12-21-22 [[29](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of Bank of New York Mellon's objection, the Debtor filed an amended plan on January 20, 2023. The confirmation hearing for the amended plan is scheduled for Marcy 7, 2023. The earlier plan filed October 28, 2022, is not confirmed.

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

The court will issue an order.

11. [22-90395](#)-B-13 DANIELLE SCAPARRO PALM CONTINUED OBJECTION TO
[RDG](#)-1 T. Mark O'Toole CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-20-22 [[25](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtor filed an amended plan on January 20, 2023. The confirmation hearing for the amended plan is scheduled for Marcy 7, 2023. The earlier plan filed October 28, 2022, is not confirmed.

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

The court will issue an order.

12. [22-90416](#)-B-13 JENNY TUNGSETH
[RDG](#)-2 Pro Se

CONTINUED MOTION TO DISMISS
CASE
1-17-23 [[34](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 38, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 38.

The court will issue an order.

13. [22-90224](#)-B-13 SCOTT SALA
[RDG](#)-2 Marc Voisenat

CONTINUED MOTION TO DISMISS
CASE
10-7-22 [[26](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 60, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 60.

The court will issue an order.

14. [22-90346](#)-B-13 CODY DESMOND
[RDG](#)-2 Arete Kostopoulos

CONTINUED MOTION TO DISMISS
CASE
1-17-23 [[25](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Debtor filed a timely response and a second amended plan; however, a confirmation hearing must be set. Nonetheless, this resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 29 and the continued hearing on February 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

15. [22-90353](#)-B-13 KELLY SEARS
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
1-13-23 [[30](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. The Debtor filed a timely response and a review of the court's docket shows that they she filed a first amended plan with a scheduled confirmation hearing date of March 21, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 43 and the continued hearing on February 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

16. [22-90174](#)-B-13 JUSTIN CARLOTTI
[RDG](#)-3 Eric J. Gravel

CONTINUED MOTION TO DISMISS
CASE
1-13-23 [[60](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. The Debtor filed a timely response and a review of the court's docket shows that he filed a second amended plan with a scheduled confirmation hearing date of March 14, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 68 and the continued hearing on February 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

17. [22-90379](#)-B-13 JAMES MAHONEY
[RDG](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
1-17-23 [[24](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. The Debtor filed a timely response and a review of the court's docket shows that he filed a first amended plan with a scheduled confirmation hearing date of March 21, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 29 and the continued hearing on February 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

18. [22-90294](#)-B-13 ARTHUR ROBLES AND VALERIA CONTINUED MOTION TO DISMISS
[RDG](#)-2 JIMENEZ ROBLES CASE
Jennifer G. Lee 1-13-23 [[24](#)]

Final Ruling

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 28, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 28.

The court will issue an order.