

**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: February 23, 2021

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

February 23, 2021 at 1:00 p.m.

- | | | | |
|----|--------------------------------|-----------------|-------------------------------|
| 1. | 20-24704 -B-13 | JAMES/JUNE GRAY | MOTION TO DISMISS CASE |
| | RDG -2 | David A. Boone | 2-9-21 [32] |

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion, and it is consistent with the Debtors' opposition filed to the motion. The motion is therefore dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041. The case will proceed in this court.

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

February 23, 2021 at 1:00 p.m.

2. [20-25635](#)-B-13 MARGARET JACKSON MOTION TO DISMISS CASE
 [RDG](#)-1 Pro Se 2-9-21 [[28](#)]

Final Ruling

The case having previously been dismissed, the motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the minutes.

The court will issue an order.

3. [20-24737](#)-B-13 CHRISTIAN LOPEZ MOTION TO DISMISS CASE
[RDG](#)-2 Richard Kwun 2-9-21 [[24](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures in response to the COVID-19 pandemic, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to dismiss case.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has caused unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) due to his failure to file, set, and serve a new plan after the Trustee's objection to confirmation was sustained on January 5, 2021. Separately, the Debtor is delinquent in plan payments in the sum of \$1,281.00.

Cause exits to dismiss this case. The motion is granted.

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

The court will issue an order.

4. [20-22949](#)-B-13 ROBERT/PENELOPE CASH MOTION TO DISMISS CASE
[RDG](#)-1 Jessica A. Dorn 2-9-21 [[68](#)]

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion 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 and the case will proceed in this court.

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

5. [21-20357](#)-B-13 CHE LUCKY
[BSH](#)-1 Brian S. Haddix

MOTION TO IMPOSE AUTOMATIC STAY
O.S.T.
2-8-21 [[15](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures in response to the COVID-19 pandemic, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making.

The court's decision is to conditionally grant the motion to extend automatic stay and continue the matter to **March 2, 2021, at 1:00 p.m.**

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 July 24, 2020, due to failure to make plan payments (case no. 19-20608, dkt. 42). 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 the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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 asserts that she failed to perform under the terms of the confirmed plan because she was experiencing a major life event with the divorce of her spouse. Debtor states that the process was contentious and caused a negative cascading effect on her financial life. Debtor states that the divorce proceedings are now complete and that she is in a better state of mental health. Debtor contends that she is capable of successfully completing her chapter 13 plan in this case.

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 conditionally granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, February 26, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee

and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted 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 March 2, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 2, 2021, at 1:00 p.m.

The court will enter a minute order.

6. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT MOTION TO DISMISS CASE
 [RDG](#)-3 Colby D. LaVelle 2-9-21 [[60](#)]

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion 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 and the case will proceed in this court.

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

7. [20-23784](#)-B-13 MARK/TRACY WEBSTER
[RDG](#)-1 Mark J. Hannon

MOTION TO DISMISS CASE
2-9-21 [[66](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures in response to the COVID-19 pandemic, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion to dismiss case.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtors have caused unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) due to their failure to file, set, and serve a new plan after multiple prior plans were denied confirmation. Separately, the Debtors are delinquent in plan payments in the sum of \$16,607.00.

Cause exists to dismiss this case. The motion is granted.

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

The court will issue an order.