

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

March 8, 2022 at 1:30 p.m.

1.	21-23900 -C-13	MAURICE RHODENNASH	MOTION FOR RELIEF FROM
	MMJ -1	Pro Se	AUTOMATIC STAY
			2-4-22 [48]
	CAPITAL ONE AUTO FINANCE VS.		

Final Ruling: No appearance at the March 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 53.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p>The Motion for Relief from the Automatic Stay is denied without prejudice as moot.</p>
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Capital One Auto Finance, a division of Capital One, N.A., filed this Motion seeking relief from the automatic stay as to the debtor's 2018 Ram 1500.

The instant case was dismissed on February 22, 2022, for unreasonable delay by debtor that is prejudicial to creditors by failing to confirm a plan and maintain plan payments. Dkt. 65.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until

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such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of February 22, 2022, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on February 22, 2022.

The court shall issue a minute 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 Motion for Relief from the Automatic Stay filed by Capital One Auto Finance, a division of Capital One, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot.

Final Ruling: No appearance at the March 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 78.

The Motion to Confirm the Amended Plan is denied as moot.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Henry Burl Reed, Jr. ("Debtor"), filed multiple amended plans after this motion was filed. Dkts. 81, 94, 98. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

The court shall issue a minute 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 Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Henry Burl Reed, Jr. ("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 the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

3. [21-22614](#)-C-13 HENRY REED
[JV-3](#) Jason Vogelpohl

MOTION TO FILE CLAIM AFTER
CLAIMS BAR DATE
2-2-22 [[87](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 97.

The Motion to File Claim After Claims Bar Date is denied.

The debtor Henry Burl Reed, Jr. ("Debtor") filed this Motion seeking authority to file after the bar date Proof of Claim, No. 8, on behalf of creditor Sacramento Department of Child Support Services.

Federal Rule of Bankruptcy Procedure Rule 3002(c)(1) allows a governmental entity to file its proof of claim within 180 days from the filing date. Rule 3004 provides 30 days after the expiration of that period for the debtor to file a claim on the creditor's behalf.

Here, Debtor filed the claim on behalf of Sacramento County Department of Child Support Services - a governmental entity - on January 24, 2022. That is 189 days from the July 19, 2021, filing date, which makes the Proof of Claim timely filed under Rule 3004.

Therefore, the Motion is denied.

The court shall issue a minute 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 Motion to File Claim After Claims Bar Date filed by Henry Burl Reed, Jr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

4. [21-22614](#)-C-13 HENRY REED
[RDG](#)-1 Jason Vogelpohl

CONTINUED MOTION TO DISMISS
CASE
1-10-22 [[70](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dkt. 73.

The Motion to Dismiss is XXXXXX

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the first two proposed plans.

The debtor thereafter filed Opposition representing a new plan would be filed, and that the delay was due to negotiations with a secured creditor. Dkt. 75. A review of the docket shows the debtor filed a Motion To Confirm setting a March 8, 2022 confirmation hearing. Dkt. 77.

DISCUSSION

At the prior hearing the court granted a continuance to allow the debtor to seek confirmation of the Second Amended Plan. However, a review of the docket shows the debtor has since filed 3 more Amended Plans. None of these plans have been set for confirmation hearing. The docket further shows that the trustee has not filed any further pleadings.

At the hearing, XXXXXX

The court shall issue a minute 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 Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED XXXXXX

5. [20-22719](#)-C-13 LUCY PATTEN
[RAS](#)-1 Allan Frumkin

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-8-22 [[82](#)]

PHH MORTGAGE
CORPORATION/BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.
VS.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 87.

The Motion for Relief from the Automatic Stay is denied.

PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's real property located at 6308 Creekcrest Circle, Citrus Heights, California (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor did not pay October 2021 property taxes since, which had to be advanced by Movant. Declaration, Dkt. 85. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$326,000.00, exceeds the value of the Property, which is \$355,852.27. *Id.*

The Motion also seeks attorney fees and waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3).

OPPOSITION

The debtor, Lucy Ann Patten, opposes the motion because she has not been able to pay the property taxes for the Property while battling cancer. She requests the motion be continued for six months to marshal resources to bring the taxes current.

DISCUSSION

Missing from the Motion is any mention that a Chapter 13 plan was confirmed in this case on January 26, 2021. Dkts. 60, 64. The confirmed Chapter 13 plan bifurcates Movant's claim and prepetition arrearages, providing for its claim as a Class 4 and its prepetition arrearages as a Class 2.

The plan at Section 3.11(a) states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C.

§ 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Dkt. 36.

Based on the plain language of the plan that Movant received notice of and did not oppose, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral in the event of a default. No argument has been presented by Movant explaining why failing to pay property taxes, here a default under applicable law or contract, would not be covered by the confirmed plan. Therefore, the relief requested by the Motion is moot.

Based on the foregoing, the Motion shall be denied.

The court shall issue a minute 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 Motion for Relief from the Automatic Stay filed by PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 16.

The Motion to Extend the Automatic Stay is granted.

The debtor Jose Luis Hernandez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on October 26, 2021, after Debtor fell delinquent in plan payments. Civil Minutes, Bankr. E.D. Cal. No. 19-24178, Dkt. 116. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because COVID-19 related reductions in income. The Debtor further represents he has obtained a loan modification as to his residence, and that many COVID restrictions are lifting, which the Debtor argues will allow this case to be successful.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay terminates as to Debtor, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay never goes into effect in the bankruptcy case when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209-10 (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.

Debtor has sufficiently rebutted 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 court shall issue a minute 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 Motion to Extend the Automatic Stay filed by Jose Luis Hernandez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.

7. [20-23749](#)-C-13 SCOTT DAVIS AND TRACY MOTION TO MODIFY PLAN
[CYB](#)-2 TANNER 1-28-22 [[72](#)]
Candace Brooks

Final Ruling: No appearance at the March 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 78.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

The Chapter 13 trustee filed a non-opposition on February 22, 2022. Dkt. 82.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute 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 Motion to Modify filed by the debtors, Scott Michael Davis and Tracy Ann Tanner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 77) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors 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 trustee will submit the proposed order to the court.

8. [18-23558](#)-C-13 ANDREW/MYRA SINGLETON
[MRL](#)-4 Mikalah Liviakis

MOTION FOR COMPENSATION FOR
MIKALAH RAYMOND LIVIAKIS,
DEBTORS ATTORNEY (S)
2-12-22 [[81](#)]

Final Ruling: No appearance at the March 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 24 days' notice was provided. Dkt. 85.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Allowance of Professional Fees is granted.
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Counsel for the debtors filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Applicant requests fees in the amount of \$2,775.00.

DISCUSSION

The post-confirmation services performed, including efforts to obtain authority for new vehicle financing and confirmation of a modified plan, constitute substantial and unanticipated work for the benefit of the Estate, the debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,775.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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 Motion for Allowance of Fees and Expenses filed by Mikalah R. Liviakis ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtors, Andrew Lynn Singleton and Myra Frances Singleton,

Fees in the amount of \$2,775.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan funds in a manner consistent with the order of distribution in a Chapter 13 case.

9. [21-21864](#)-C-13 GUNVANT PATEL
[GEL](#)-4 Gabriel Liberman

CONTINUED MOTION TO CONFIRM
PLAN
12-13-21 [[76](#)]

Final Ruling: No appearance at the March 8, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 81.

The Motion to Confirm is denied as moot.

On March 1, 2022, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Plan is denied as moot, and the plan is not confirmed.

The court shall issue a minute 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 Motion to Confirm filed by the debtor, Gunvant Mangubhai Patel, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice that requires an order from the Court shortening the notice period. The Court granted the Application for Order Shortening Time and Proof of Service shows that notice was provided on March 1, 2022. Dkts. 68, 69.

The Motion to Refinance is Granted.

The debtors filed this Motion seeking authority to refinance their property located at 853 McCauley Way, Galt, California. The debtors propose using the funds from the refinanced loan to payoff the balance of their chapter 13 plan payments and completing their case.

The proposed financing is in the principal amount of \$504,680, paid at 4.375% interest over a 360 months term. Monthly payments are proposed to be \$3,482.03.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute 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 Motion to Refinance Debt filed by William Valencia II and Eileen Valencia having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.