

**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: March 14, 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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

March 14, 2023 at 1:00 p.m.

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

CONTINUED TO 3/28/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/22/2023.

Final Ruling

No appearance at the March 14, 2023, hearing is required. The court will issue an
order.

2. [19-90441](#)-B-13 ISABEL REENA IGNACIO
Mark J. Hannon

MOTION TO MODIFY PLAN
1-10-23 [[53](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). 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 permit the requested modification and not confirm the modified plan.

At a minimum, Debtor has failed to file a modified plan as required by Local Bankr. R. 3015-1(d)(2) and failed to adhere to numerous civil procedures such as using the correct case number, filing documents separately, using the mandatory certificate of service, using a docket control number, using the correct pleading format, and providing proper notice of hearing.

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

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

The court will issue an order.

3. [22-90346](#)-B-13 CODY DESMOND
[KLG-2](#) Arete Kostopoulos

MOTION TO CONFIRM PLAN
2-2-23 [[30](#)]

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.

4. [23-90073](#)-B-13 RUBEN ALVAREZ AND MARIA MOTION TO EXTEND AUTOMATIC STAY
[GSJ-1](#) GOMEZ-ALVAREZ 2-28-23 [[9](#)]
Grace S. Johnson

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.

Debtors Ruben Alvarez and Maria Gomez-Alvarez ("Debtors") seek 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 Ruben Alvarez's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on January 13, 2023, for failure to make plan payments (case no. 20-90342, dkt. 78). 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). 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).

The Debtors assert that good cause exists for granting the motion to extend the automatic stay as to all creditors. The instant case was filed in order to cure pre-petition arrears owed on the primary residence and to stop foreclosure on their home. Debtors currently receive regular employment income and their schedules reflect an ability to fund the plan and obtain a discharge. Debtors state that Debtor Ruben Alvarez fell behind on his plan payments in the previous case because there were unexpected vehicle expenses and unexpected home expenses. Also one of Debtor's employers did not pay him for three months. Debtors believe they will be able to make the future payments because they plan to sign up for TFS automatic payments and will prioritize their plan payments over other expenses.

The Debtors have 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.

5. [22-90174](#)-B-13 JUSTIN CARLOTTI
[EJV](#)-3 Eric J. Gravel

MOTION TO CONFIRM PLAN
1-30-23 [[65](#)]

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 will address the merits of the motion at the hearing.]

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 second amended plan.

Debtor's plan is not feasible since it appears he is unable to fund the plan. Debtor's Schedules I and J show a monthly net income of \$1,462.91. However, Debtor's proposed plan payments commencing February 2023 is \$1,800.00. Debtor's motion and declaration in support of the motion are silent as to the source of the additional income.

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.

6. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[JCK-6](#) Gregory J. Smith

MOTION TO MODIFY PLAN
1-25-23 [[142](#)]

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.

7. [19-90291](#)-B-13 LUIS ALCANTARA
[WLG](#)-5 Nicholas Wajda

CONTINUED MOTION TO SELL
2-20-23 [[97](#)]

Final Ruling

This matter was continued from March 7, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 10, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 110, granting the motion to sell, shall become the court's final decision. The continued hearing on March 14, 2023, at 1:00 p.m. is vacated.

The motion is ordered granted.

Debtor's attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

8. [22-90469](#)-B-13 PEDRO BECERRA
[RDG-1](#) David C. Johnston

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
2-13-23 [[23](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal 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 January 8, 2023, 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 and 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.