

**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: April 12, 2022**

**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

**April 12, 2022 at 1:00 p.m.**

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1.     [21-90211](#)-B-13     STEPHANIE STANDEN     MOTION TO MODIFY PLAN  
          [SSH](#)-1             Simran Singh Hundal     3-3-22 [[26](#)]

**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.

**April 12, 2022 at 1:00 p.m.**

2. [21-90158](#)-B-13 JILL MURPHY  
[LBF](#)-6 Lauren Franzella

MOTION TO INCUR DEBT  
3-28-22 [[63](#)]

### **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 **conditionally grant the motion and continue the matter to April 19, 2022 at 1:00 p.m.**

The motion seeks permission to purchase a 2022 GMC Canyon, the total purchase price of which is \$18,791.71, with monthly payments of \$453.29. In the past year, Debtor has had several issues with her 2018 Dodge Ram. After contacting a lemon law attorney and communicating with the dealership, Debtor reached an agreement with the dealership wherein the dealership will buy back the 2018 Dodge Ram and Debtor will receive a net proceed of \$22,828.41. Debtor will use \$20,000.00 of the net proceeds as a down payment for the 2022 GMC Canyon. The prior monthly payment for the 2018 Dodge Ram was \$858.63, and the new monthly payment for the 2022 GMC Canyon will be \$453.29. Debtor previously filed a motion to incur debt in this court which was denied because Debtor failed to address why she required a new vehicle for her transportation needs. Dkt. 56. In the instant motion, Debtor argues that she requires a new vehicle for several reasons: (1) purchasing an older vehicle with higher mileage would result in potentially high maintenance costs, (2) the older vehicle would have a higher potential to break down, (3) even if Debtor found an older vehicle to purchase, the market for used cars is "extremely high", and the price the debtor would pay for a used car with higher miles would be "nearly the same" as the debtor purchasing a newer vehicle with low miles. Debtor has supported their motion with several exhibits showing the price of used cars being similar to that for the 2022 GMC Canyon. Additionally, Debtor asserts that as a result of a total knee replacement, and PTSD stemming from her mother's death in a car accident, she is unable to drive smaller compact vehicles.

### **Discussion**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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.

### **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, April 15, 2022, 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 creditor 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 April 19, 2022, 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 April 19, 2022, at 1:00 p.m.

3. [19-90874](#)-B-13 DENNIS/MICHELLE PAYNE MOTION TO MODIFY PLAN  
[LBF](#)-1 Lauren Franzella 3-4-22 [[25](#)]

**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<sup>s</sup> have 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 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 Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

### **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 February 4, 2022, for delinquency in plan payments and failure to file, set, and serve a third amended plan (case no. 21-90422, dkt. 82 Notice of Entry of Dismissal). 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 asserts that his previous bankruptcy case failed due to an inability on Debtor's behalf to cure his Chapter 13 plan payment default as a result of an error with child support payments being taken out of Debtor's paycheck. Debtor asserts that too much money was taken out of his paycheck in a particular pay period. Debtor asserts that Stanislaus County erroneously garnished his paycheck twice in one pay period, which derailed his plan payments and caused him to lack sufficient funds to make the Chapter 13 plan payment. Following filing of the instant bankruptcy case, Debtor asserts that he better understands the process of a bankruptcy plan and will make sure that no such mistakes happen again regarding his child support garnishment. Debtor asserts he has taken the proper precautions to ensure that Stanislaus County does not repeat the mistake of doubling his child support in one pay period. Further, Debtor asserts that he has made adjustments to his budget in order to keep up with all of his expenses and to provide for his Chapter 13 plan payment.

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.