



**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

**April 25, 2023 at 1:30 p.m.**

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Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. You are required to give the court 24 hours advance notice. Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
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**UNITED STATES BANKRUPTCY COURT**

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1. [22-20738](#)-C-13 STEVEN TRAN MOTION TO MODIFY PLAN  
[MRL](#)-1 Mikalah Liviakis 2-28-23 [[36](#)]

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 56 days' notice was provided. Dkt. 41.

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><b>The Motion to Modify Plan is granted.</b></p>
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The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

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 Plan filed by the debtor, Steven Tran, 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. 40) meets the requirements of

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11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. 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 trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.  
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The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 108.

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 Plan is granted.**

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

No opposition to the Motion has been filed.

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 Plan filed by the debtors, Jennifer and David Kalinen, 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. 106) 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.

3. [23-20373](#)-C-13 ROMEO PALMA  
[RDG](#)-1 Stephan Brown

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
3-27-23 [[14](#)]

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.  
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The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 17.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The Objection to Confirmation of Plan is overruled as moot.**

The Chapter 13 trustee filed this Objection to Confirmation on March 27, 2023. Thereafter, the debtor filed an amended plan and corresponding Motion to Confirm, making this Objection moot. Dkt. 18, 20.

Therefore, the Objection is overruled.

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 Objection to the Chapter 13 Plan 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** that the Objection is overruled as moot.

4. [20-20775](#)-C-13 EBALINA HERNANDEZ AND MOTION TO USE CASH COLLATERAL  
[PGM](#)-2 ALAN TRUJILLO DOMINGUEZ 3-28-23 [[52](#)]  
Peter Macaluso

**No 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. 55.

**The Motion for Authority to Use Cash Collateral is ~~xxxxxxx~~**

Ebalina Hernandez and Alan Dominguez ("Debtors") move for an order approving the use of cash collateral from insurance proceeds of a 2012 Toyota Tacoma ("Property") that was secured by Golden 1 Credit Union ("Creditor"). Debtors request the use of cash collateral to purchase a new vehicle because two vehicles are needed in debtor's household.

Creditor, The Golden 1 Credit Union ("Creditor"), opposes the motion because the contract between the parties provides that not only shall Creditor have a lien over the vehicle, but also have a security interest in money received from insurance placed on the vehicle. Therefore, Creditor argues that the money received from insurance should be paid over to Creditor, and there is no adequate substitute to the collateral other than the insurance funds paid.

**APPLICABLE LAW**

As a debtor in Chapter 13, the debtor, sell, or lease property of the estate pursuant to 11 U.S.C. § 363(b), (d), (f) & (l). In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless-

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease-

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b) (2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

At the hearing **xxxxxxx**

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 Authority to Use Cash Collateral filed by Ebalina Hernandez and Alan Dominguez ("Debtors") 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 **xxxxxxx**

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.  
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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. 47.

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 Confirm is granted.**

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 46) filed on March 17.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). 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 Confirm filed by the debtor, Nirmal Singh, 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 Amended Chapter 13 Plan (Dkt. 46) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. 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 trustee will submit the proposed order to the court.



**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 28 days' notice was provided. Dkt. 17.

**The Motion to Extend the Automatic Stay is granted.**

Darius Hudson, Jr. ("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 February 26, 2023, after Debtor fell behind on plan payments due to rising costs. Order, Bankr. E.D. Cal. No. 19-27643, Dkt. 33. 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 of inflationary pressures that raised the costs of energy, food, insurance, fuel and medical costs.

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 Darius Hudson, 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 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.

Thru #8

**Tentative Ruling:**

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. There was no Proof of Service that was filed with the court showing that the motion was served.

**The Motion to Confirm is denied.**

The debtor filed this Motion seeking to confirm the Fourth Amended Chapter 13 Plan (Dkt. 212) filed on March 13, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 219) on April 4, 2023, opposing confirmation on the following grounds:

1. The plan was filed without a declaration from the debtor in support of confirmation;
2. Debtor has failed to provide the Trustee with a copy of debtor's 2021 Federal and State income tax returns;
3. Debtor has failed to provide the Trustee with a year-to-date profit and loss statement for debtor's business;
4. Debtor has failed to amend her schedules reflecting the foreclosure of her property; and
5. The plan is not feasible.

Creditors, Michael J. Harrington and Jennine Banayat filed an opposition (Dkt. 227) on April 10, 2023, opposing confirmation on the following grounds:

1. Debtor has failed to carry her burden of proof as to the feasibility of her plan and the good faith filing of her plan;
2. Plan fails to address any of the secured creditors and their interests in violation of 11 U.S.C. 1325(a)(5)(B)(i)(I), (ii) & (C);
3. Plan limits Creditor Banayat's claim and fails to provide for the deficiency in her claim;
4. Plan fails the liquidation test and is not feasible; and
5. Plan is not filed in good faith.

The debtor filed responses to both objections (dkts. 242 & 245) on April 18, 2022.

## DISCUSSION

A declaration by the debtor in support of the plan was not filed by the debtor. That is reason to deny confirmation.

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e) (2) (A) (i); FED. R. BANKR. P. 4002(b) (3). That is cause to deny confirmation. 11 U.S.C. § 1325(a) (1).

The debtor has not filed all business documents including six months of profit and loss statements. 11 U.S.C. §§ 521(e) (2) (A) (i), 704(a) (3), 1106(a) (3), 1302(b) (1), 1302(c); FED. R. BANKR. P. 4002(b) (2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a) (3). That is cause to deny confirmation. 11 U.S.C. § 1325(a) (1) & (a) (6).

The plan mathematically requires a payment of \$996.00 per month, which is greater than the proposed \$716.00 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a) (6).

Finally, the debtor concedes that the plan is not confirmable as filed and represents in her responses that she will be filing a fifth amended plan.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, 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, Generosa Dizon, 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, and the plan is not confirmed.

**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 40 days' notice was provided. Dkt. 218.

**The Motion for return of cash collateral is denied without prejudice.**

Creditor, Michael J. Harrington as Trustee for The Michael J. Harrington Living Trust established August 20, 2003 (Movant) filed this Motion on March 15, 2023 seeking to recover money from the debtor and the Chapter 13 Trustee. Movant seeks an order pursuant to FRBP 4001(a) and 11 U.S.C. § 363(c)(2).

Movant represents the rents from the debtor's real property located at 8609 Banff Vista Drive, Elk Grove, California were assigned to the debtor's lender, which was then assigned over to Movant when he bought the Deed of Trust from the lender. Movant asserts that since the debtor has not sought, nor has been approved for, the use of cash collateral, the rents belong to him and should be immediately paid over to Movant.

**DISCUSSION**

§ 541(a)(1) defines property of the estate as all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). § 541(a)(6) further states that "all proceeds, product, offspring, rents, or profits of or from property of the estate" are property of the estate. 11 U.S.C. § 541(a)(6).

Federal Rule Bankruptcy Procedure 4001(a) provides that "(a) motion for relief from the automatic stay... or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014..." Fed. R. Bankr. P. 4001(a) (emphasis added). Since this is neither a motion for relief nor a motion pursuant to § 363(e), Rule 4001(a) is inapplicable.

Rule 7001 provides the Scope of Rules of Part VII, or the Rules for an adversary proceeding. "An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002." Fed. R. Bankr. P. 7001(1).

Movant is seeking to recover money from the estate, and none of the exceptions in the rule apply. Therefore, Movant must seek to recover through an adversary proceeding and the Rules in Part VII.

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 recover money filed by the Michael J. Harrington as Trustee for The Michael J. Harrington Living Trust established August 20, 2003, 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 to filing an adversary proceeding.