

**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: June 13, 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  
Sacramento, California

**June 13, 2023 at 1:00 p.m.**

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1. [23-21010](#)-B-13 EARL SPARKES OBJECTION TO CONFIRMATION OF  
[KAZ](#)-1 Anh V. Nguyen PLAN BY THE BANK OF NEW YORK  
**Thru #4** MELLON  
5-24-23 [[30](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain in part the objection and deny confirmation of the plan.

Objecting creditor The Bank of New York Mellon ("Creditor") holds a deed of trust secured by Debtor's real property commonly known as 9908 D Street, Oakland, California. The creditor has filed a timely proof of claim 8-1 in which it asserts \$62,623.83 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Separately, the Debtor may not have the ability to fund the plan. Debtor's Schedule I and J shows a net income of \$1,502.77. This would not be sufficient income to fund the plan after taking into account the arrears owed to Creditor. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Although requested in the objection, Creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this objection. Creditor is not awarded any attorneys' fees.

The plan filed March 30, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

The objection is ORDERED SUSTAINED IN PART for reasons stated in the minutes.

The court will issue an order.

**June 13, 2023 at 1:00 p.m.**

**Page 1 of 10**

2. [23-21010](#)-B-13 EARL SPARKES  
[NLG](#)-1 Anh V. Nguyen

OBJECTION TO CONFIRMATION OF  
PLAN BY BOSCO CREDIT, LLC  
5-5-23 [[16](#)]

### **Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

Objecting creditor Bosco Credit, LLC ("Creditor") holds a deed of trust secured by Debtor's real property commonly known as 1203 Lloyd Thayer Circle, Stockton, California. The creditor has filed a timely proof of claim 5-1 in which it asserts a claim of \$76,134.08. Debtor's plan lists the Creditor in Class 2, which is reserved for liens that will not be modified and will be paid in full. The plan does not provide for the full amount of Creditor's claim and no objection to claim has been filed by the Debtor. The plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(ii).

Additionally, Creditor objects to the proposed interest rate of 0%. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., June 10, 2023, [http://online.wsj.com/mdc/public/page/mdc\\_bonds.html](http://online.wsj.com/mdc/public/page/mdc_bonds.html). The current prime rate is 8.25%. To set the appropriate rate, courts utilize the "formula approach" of *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), which takes into consideration the national prime rate and adjusts it for a greater risk of default posed by a debtor. Courts have typically adjusted the interest rate by 1% to 3%. The court finds that an interest rate of 8.75%, which Creditor states it is owed, is appropriate.

Separately, the Debtor may not have the ability to fund the plan. Debtor's Schedule I and J shows a net income of \$1,502.77. This would not be sufficient income to fund the plan after taking into account the claim and interest owed to Creditor. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed March 30, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [23-21010](#)-B-13 EARL SPARKES  
[NLG](#)-1 Anh V. Nguyen

OBJECTION TO CONFIRMATION OF  
PLAN BY BOSCO CREDIT, LLC  
5-8-23 [[20](#)]

### **Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and

file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

Objecting creditor Bosco Credit, LLC ("Creditor") holds a deed of trust secured by Debtor's real property commonly known as 9908 D Street, Oakland, California. The creditor has filed a timely proof of claim 7-1 in which it asserts a claim of \$121,951.42. Debtor's plan lists the Creditor in Class 2, which is reserved for liens that will not be modified and will be paid in full. The plan does not provide for the full amount of Creditor's claim and no objection to claim has been filed by the Debtor. The plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(ii).

Additionally, Creditor objects to the proposed interest rate of 0%. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., June 10, 2023, [http://online.wsj.com/mdc/public/page/mdc\\_bonds.html](http://online.wsj.com/mdc/public/page/mdc_bonds.html). The current prime rate is 8.25%. To set the appropriate rate, courts utilize the "formula approach" of *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), which takes into consideration the national prime rate and adjusts it for a greater risk of default posed by a debtor. Courts have typically adjusted the interest rate by 1% to 3%. The court finds that an interest rate of 7.625%, which Creditor states it is owed, is appropriate.

Separately, the Debtor may not have the ability to fund the plan. Debtor's Schedule I and J shows a net income of \$1,502.77. This would not be sufficient income to fund the plan after taking into account the claim and interest owed to Creditor. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed March 30, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

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| 4. | <a href="#"><u>23-21010</u></a> -B-13    EARL SPARKES<br><a href="#"><u>RDG-1</u></a> Anh V. Nguyen | OBJECTION TO CONFIRMATION OF<br>PLAN BY RUSSELL D. GREER<br>5-22-23 [ <a href="#"><u>24</u></a> ] |
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#### **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.

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

The court will issue an order.

**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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor has failed to file supplemental Schedules I and/or J to support an increase in plan payment, that the plan fails to provide for post-petition arrears owed to Class 1 creditor Selene Finance LP for April 2023, and that the Debtor is delinquent in plan payments.

The Debtor filed a response stating that he has filed amended Schedules I and J, the proposed order confirming will provide for the post-petition arrears of \$1,164.14 owed to Selene Finance LP, and that the May 25, 2023, plan payment will be paid before the June 13, 2023, hearing.

Given that the issues raised by the Trustee appear to be resolved and provided that the Debtor has cured the delinquency, the modified plan is deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be 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.

6. [23-21024](#)-B-13 TARIQ ASLAMI  
[RDG](#)-1 Eric M. Nixdorf

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
5-22-23 [[13](#)]

**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 March 30, 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.

### **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 April 19, 2023, for failure to file, set, and serve an amended plan and motion to confirm it (case no. 18-26413, dkt. 54). 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 Debtor assert that she was not able to afford plan payments because there was an IRS claim that Debtor owed and she had not taken enough taxes out of her paycheck. Debtor states that her circumstances have changed because she has filed all old taxes, increased her tax deductions, and can keep up with the proposed plan without acquiring new tax debt.

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.

8. [23-20161](#)-B-13 MACARIO LOPEZ OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 Michael T. Reid PLAN BY RUSSELL D. GREER  
5-22-23 [[35](#)]

CONTINUED TO 6/20/23 at 1:00 P.M., SACRAMENTO COURTROOM, TO BE HEARD AFTER THE  
CONTINUED MEETING OF CREDITORS SET FOR 6/14/23.

## Final Ruling

No appearance at the June 13, 2023, hearing is required. The court will issue an order.



9. [23-20383](#)-B-13 LORAINÉ/WINNIEFREDO MOTION TO CONFIRM PLAN  
[PLC](#)-1 MACANDOG 5-2-23 [[26](#)]  
Peter L. Cianchetta

### **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 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 first amended plan.

The Debtors' plan may not be feasible. The Debtors' Statement of Financial Affairs lists a \$263,977.00 pension withdrawal in 2020. The Debtors testified at their meeting of creditors that Co-Debtor had cashed out his pension from prior employment with Southwest, and that he had gifted most of the monies to friends and family in the Philippines. Debtors filed a declaration stating that the Chase Bank accounts where the Southwest deposit was made had been closed prior to their bankruptcy filing, and that statements from the Chase accounts are unavailable and inaccessible. The Trustee requests that the Debtors file a declaration stating when the money was received and how the money was expended including to whom, in what amount, and on what date. The court finds this request reasonable.

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.

10. [22-22398](#)-B-13 GREGORIO DASALLA  
[CRG](#)-7 Carl R. Gustafson

OBJECTION TO CLAIM OF  
AMERICREDIT FINANCIAL SERVICES,  
INC., CLAIM NUMBER 1  
4-28-23 [[100](#)]

**Final Ruling**

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 overrule as moot the objection to Claim No. 1 of AmeriCredit Financial Services, Inc.

AmeriCredit Financial Services, Inc. dba GM Financial filed a withdrawal of its claim on May 19, 2023, stating that its claim has been paid in full. Therefore, the objection to claim filed by the Debtor is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

11. [23-21491](#)-B-13 LINDA SAEFONG AND KAO CONTINUED MOTION TO VALUE  
[MC-1](#) SAEPHAN COLLATERAL OF BMW FINANCIAL  
Muoi Chea SERVICES N.A., LLC  
5-15-23 [[12](#)]

**Final Ruling**

This matter was continued from June 6, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 9, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 21, granting the motion to value collateral of BMW Financial Services N.A., LLC, shall become the court's final decision. The continued hearing on June 13, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.