

**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 15, 2021**

**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 15, 2021 at 1:00 p.m.**

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1. [19-23200](#)-B-13 JAMES/GAIL PERKINS MOTION TO REFINANCE  
[PLG](#)-2 Rabin J. Pournazarian 5-27-21 [[37](#)]

**Final Ruling**

The motion has been set for hearing on less than 28-days' notice. Local Bankruptcy Rule 9014-1(f)(2). The court has also 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 refinance.

Debtors seek court approval to refinance real property commonly known as 1155 Orangewood Drive, Lodi, California ("Property") with Flagstar Bank ("Creditor"), holder of the first deed of trust. Debtors state that the new debt is a single loan incurred only to refinance existing debt encumbering their Property. The only security for the new debt will be the Property. Lastly, the monthly payment will not exceed their current monthly payment.

The motion is supported by the Declaration of James Perkins and Gail Perkins. The Declaration affirms Debtors' desire to refinance the Property.

The Chapter 13 Trustee filed a non-opposition to Debtor's motion but requests that any order approving provides language including: (1) the refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered; (2) the Trustee shall approve the Title Company and Escrow Company to be used in connection with the refinance. His approval shall not be unreasonably withheld; (3) the Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement; (4) Debtors to provide the estimated closing statement immediately, as it was not provided with the motion.

Debtors filed a response stating that an estimated closing statement is unavailable until the loan is officially closed according to their loan officer, the loan estimate attached as an exhibit to the Debtors' motion is very accurate because the loan is a VA Earl loan, and the Debtors will provide the closing statement as soon as it is available.

The repayment of the new loan does not appear to unduly jeopardize Debtors' performance of the plan filed May 20, 2019. The motion complies with the provisions of 11 U.S.C. § 364(d) and will be granted.

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

The court will issue an order.

**June 15, 2021 at 1:00 p.m.**

**Final Ruling**

The motion 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). Oppositions were 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.

First, feasibility of Debtors' plan is contingent on Debtors submitting another \$2,880.00 into the plan in the month of May 2021. Without a timely May 2021 payment, the Chapter 13 Trustee will be unable to disburse enough funds to Class 1 creditor, Select Portfolio Servicing Inc., to pay the post-petition arrears of \$1,843.49.

Second, Section 7.09 of Debtors' plan states that they will pay the Internal Revenue Service directly \$1,500.00 per month in months 11-14 (February 2021 through May 2021) for the 2018 and 2019 priority tax debt since there was no timely proof of claim filed. Without supporting documentation, Trustee is unable to determine Debtors' total tax debt, if these payments were completed in February 2021 through May 2021, and whether Debtors anticipate owing taxes in subsequent tax years.

Third, Debtors' supplemental Schedule J, line 16, lists the expense of \$1,500.00 for the abovementioned back taxes owed to the Internal Revenue Service. Pursuant to Section 7.09 of Debtors' plan, the last month for this expense will be May 2021. Accordingly, Debtors' monthly net income beginning June 2021 will be \$4,380.92 (\$2,880.92 plus \$1,500.00). Debtors' proposed plan payment is only \$4,005.00 beginning June 2021. Accordingly, Debtors are not contributing all of the disposable income into the plan beginning June 2021.

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. [14-22555](#)-B-13 MELANIO/ELLEN VALDELLON MOTION EXCLUDE EVIDENCE AND/OR  
[21-2008](#) WW-1 MOTION TO CONCLUSIVELY FIND AND  
VALDELLON ET AL V. WELLS FARGO DETERMINE FACTS  
BANK, N.A. ET AL 5-18-21 [[28](#)]

**Final Ruling**

The court entered an order on June 8, 2021, vacating the June 15, 2021, 1:00 p.m. hearing. See dkt. 40. No appearance is required.

The court will issue an order.

4. [17-27960](#)-B-13 CRAIG GILMORE  
[RAS](#)-1 G. Michael Williams

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-11-21 [[149](#)]

WILMINGTON SAVINGS FUND  
SOCIETY, FSB VS.

**Final Ruling**

Creditor Wilmington Savings Fund Society, FSB having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

5. [21-20969](#)-B-13 ALFEDO/MARTHA ALEGRIA OBJECTION TO DEBTOR'S CLAIM OF  
[RDG](#)-2 Nikhil Bhatnagar EXEMPTIONS  
5-12-21 [[26](#)]

**Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 sustain the objection and disallow the exemptions.

The Chapter 13 Trustee objects to the Debtors' use of both C.C.P. § 704.730 and C.C.P. § 703.140(b)(2) to claim assets exempt. These code sections are mutually exclusive and may not be used together.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the minutes.

The court will issue an order.

6. [21-21792](#)-B-13 CHE LUCKY  
[BSH](#)-3 Brian S. Haddix

MOTION TO REINSTATE THE  
AUTOMATIC STAY O.S.T.  
6-4-21 [[21](#)]

### **Final Ruling**

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). The court has also 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 reinstate the automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed in December 2020, due to failure to make plan payments arising from personal issues including a contentious divorce (case no. 19-20608, dkt. 41). The Debtor's second bankruptcy case was dismissed in May 2021, after Debtor failed to pay a filing fee installment (case no. 21-20357, dkt. 44).

### **Discussion**

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

Debtor states that the previous cases, pending within the last year, were dismissed due to personal issues that Debtor faced the past year including a contentious divorce and his work in healthcare during the COVID-19 pandemic. Debtor states that he wants to keep his house because it is his most important asset and is the place where he spends time with his son. His personal affairs have resolved since the dismissal of his previous case, and he intends to repay his mortgage arrears and cure the default.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

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

The court will issue an order.