

**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: July 19, 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

July 19, 2022 at 1:00 p.m.

1. [18-90901](#)-B-13 GARY/COLEEN EDWARDS MOTION TO MODIFY PLAN
[TLC](#)-1 Tamie L. Cummins 6-6-22 [[135](#)]

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 Debtors 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.

July 19, 2022 at 1:00 p.m.

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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 the automatic stay.

This is the second bankruptcy case that debtor Baljeet Singh ("Debtor") filed after the dismissal of a prior bankruptcy case within one year before the petition date of this case. The Debtor filed this chapter 13 case on June 22, 2022. The Debtor's prior chapter 13 case, case no. 21-90135, was dismissed on March 4, 2022.¹

Debtor moves pursuant to 11 U.S.C. § 362(c)(3) to extend the automatic stay of 11 U.S.C. § 362(a) beyond thirty days after the petition date of this case. Attorney David C. Johnston ("Mr. Johnston") represents the Debtor in this chapter 13 case and he also represented the Debtor in the prior dismissed chapter 13 case.

Discussion

Section 362(c)(3) generally provides that the automatic stay of 11 U.S.C. § 362(a) terminates thirty days after a petition is filed in a second bankruptcy case if a prior bankruptcy case was dismissed within one year of the petition date of the second case. See 11 U.S.C. § 362(c)(3)(A). Subject to limitations and conditions as the court may impose, the court may extend the automatic stay beyond the thirty-day period following a hearing before the thirty-day period expires and if the party moving for an extension demonstrates that the second case was filed in good faith. See 11 U.S.C. § 362(c)(3)(B). Absent an extension, the automatic stay termination date in this case is July 22, 2022. See *dk*t. 11 at ¶ 8.

A second bankruptcy case is presumptively not filed in good faith if, for among other reasons, the prior bankruptcy case was dismissed within the preceding year because the debtor failed to "file . . . documents as required by [Title 11] or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney)[.]" 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). When the presumption arises, it must be rebutted by clear and convincing evidence before the court may extend the automatic stay as to all creditors. See 11 U.S.C. § 362(c)(3)(C).

Mr. Johnston asserts that the presumption this case was not filed in good faith does not arise because he negligently failed to file an opposition to the chapter 13 trustee's motion to dismiss the Debtor's prior chapter 13 case before the February 25, 2022, deadline. See *dk*t. 11 at ¶ 10. Mr. Johnston asserts that his failure to timely oppose the chapter 13 trustee's motion to dismiss the Debtor's prior case was negligent because he lacked support staff and was stricken with a second bout of COVID-19, which made him extremely ill, confined him to bed, isolated him, and rendered him unable to work between February 7, 2022, and February 28, 2022. See *dk*t. 9 at ¶¶ 2-3; *dk*t. 11 at

¹But for one day, this would be the Debtor's third bankruptcy case dismissed in the year before the petition date of this case. Case no. 21-90261, was dismissed on June 21, 2021, for failure to timely file documents.

Mr. Johnston's assertions of negligence are not credible and the court does not believe Mr. Johnston's statement that the lack of support staff and COVID-19 rendered him unable to work between February 7, 2022, and February 28, 2022, and, thus, unable to timely oppose dismissal of the Debtor's prior chapter 13 case. Mr. Johnston's activity in other pending cases clearly demonstrates that he was able to work - and he performed a number of tasks without support staff and with COVID-19 - during the referenced three-week period. For example, (1) on February 7, 2022, Mr. Johnston filed a chapter 11 petition in *In re Area X, Inc.*, case no. 22-90041; (2) on February 10, 2022, Mr. Johnston apparently reviewed and signed a joint request for an extension in *Singh v. Kaur*, adv. no. 21-02068; and (3) on February 12, 2022, Mr. Johnston filed Schedules, Statement Financial Affairs, and Form 122 documents totaling 42 pages in *In re Salinas*, case no. 22-90028.

Mr. Johnston's apparent ability to work without support staff and with COVID-19 means several things. First, it means that the failure to timely oppose the chapter 13 trustee's motion to dismiss the Debtor's prior case was a matter of choice and not attorney negligence.³ Second, it means the Debtor's prior chapter 13 case was dismissed for failure to timely file documents without substantial excuse. Third, it means the presumption this case was not filed in good faith arises. And fourth, it means that the presumption is not rebutted by clear and convincing evidence of attorney negligence.

The absence of clear and convincing evidence resulting from Mr. Johnston's complete lack of credibility would typically result in significant detriment to the client in the form of a denied motion to extend the automatic stay based on a failure to rebut the presumption this case was not filed in good faith. And because this court has historically followed *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011), that would mean the automatic stay would terminate in its entirety on July 22, 2022, leaving the Debtor at the mercy of creditors. Instead, because the Debtor "speaks very little English and is not able to read or write English[,]” dkt. 11 at ¶ 12, and because the Debtor should not be punished or penalized for selecting an untruthful and less than diligent attorney, the court has independently reviewed the Schedules filed in this case on July 10, 2022, dkt. 16, and the Schedules filed on August 23, 2021, in the Debtor's prior chapter 13 case, case no. 21-90345 at dkt. 24.

Schedules are signed and filed under penalty of perjury. See Fed. R. Bankr. P. 1008. As such, they have evidentiary value. See *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012). The Schedules filed in this case reflect a positive change in the Debtor's financial affairs. As a general matter, the Schedules filed in this case reflect that the total value of the Debtor's property has increased and liabilities have decreased when compared with the Schedules filed in the Debtor's prior chapter 13 case. Of particular note, Schedule A values the Debtor's residence at \$597,900.00 whereas the property was valued at \$558,700.00 in the Debtor's prior chapter 13 case. Schedules I and J filed in this case also reflect slightly more

²Mr. Johnston has made similar claims in other pending cases. See *In re Singh*, case no. 21-90345, dkt. 56 at ¶ 3 (“On February 7, 2022, one day before the motion to dismiss was filed, I became extremely sick due to COVID-19 despite two Pfizer vaccinations and a booster. Since that date, I remained in bed at home, in isolation, and unable to work. Today, February 28, 2022, is the first day I have been able to work.”). Explaining why he failed to timely file an amended plan after confirmation of a prior plan was denied, in *In re Michelle A. Pimentel-Montez*, case no. 21-90585, Mr. Johnston also stated that he “was stricken with COVID-19 for a second time and was unable to work for three weeks.” Dkt. 29 at 1:26-2:1.

³The court is also hard-pressed to believe Mr. Johnston's assertion that he was unaware of the motion to dismiss in the first instance. Mr. Johnston was clearly online and active in his other cases. He would have received notice of the motion to dismiss through the court's electronic filing system.

monthly income when compared with Schedules I and J filed in the Debtor's prior case (even with the omission in this case of expenses for certain utilities listed in the prior case).

In short, the court is persuaded that the Schedules are clear and convincing evidence that rebut the presumption this case was not filed in good faith because they demonstrate a substantial change in the Debtor's financial affairs. See 11 U.S.C. § 362(c)(i)(III). The court is also persuaded the Debtor filed this case for the good faith purpose of dealing "with a delinquent second home loan which the Debtor believed had been combined with a loan originally held by the same lender which had been modified. The Debtor made all of the payments under the modification and the senior home loan is current." Dkts. 9 at ¶ 10, 11 at ¶ 11.

The court will therefore grant the motion and extend the automatic stay of 11 U.S.C. § 362(a) beyond thirty days after the petition date of this case as to all creditors and for all purposes, unless otherwise 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.

PHH MORTGAGE CORPORATION VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). 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 grant in part and deny in part the motion for relief from stay.

PHH Mortgage Corporation as attorney in fact for Bank of New York Mellon Trust Company, N.A. as Trustee for Mortgage Assets Management Series I Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1004 Hawk Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Marilyn Solivan to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Movant states that Debtor received an interest in the Property by grant deed transfer from original borrower Edward Gillis on October 8, 2019. This date is after the Debtor filed for bankruptcy on May 25, 2017; the Property is not listed in Debtor's schedules and was not included in her plan confirmed on October 25, 2017. Mr Gillis had obtained a reverse deed of trust on February 1, 2006, and passed away on November 16, 2019. As of April 21, 2022, the unpaid principal balance of the note plus interest advances, and other amounts is \$299,433.16. The value of the Property is \$307,000.00.

Separately, Movant requests \$1,238.00 in attorneys' fees in accordance with loan documents and states that the fees should not be paid by the Debtor personally but rather they will be added to the final loan balance.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012)

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

Attorneys' Fees Requested

Although Movant states that there is a contractual basis for an award of reasonable attorneys' fees and costs, Movant has not filed as an exhibit a breakdown of the fees and costs incurred in connection with the filing of this motion. Therefore, Movant is not awarded any attorneys' fees.

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the minutes.

The court will issue an order.

4. [22-90157](#)-B-13 OSCAR/SANDRA LOPEZ
[MJC](#)-1 Lauren Franzella

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-13-22 [[15](#)]

EVA MUNOZ VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). 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 grant the motion for relief from stay.

Eva Munoz ("Movant") seeks relief from the automatic stay so that she may continue with the adjudication of her pre-petition complaint *Munoz v. Lopez* ("State Court Litigation"). The moving party has provided the Declaration of Eva C. Munoz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Munoz Declaration states that the State Court Litigation was commenced in order to determine ownership of real property. Movant contends that she had assisted Debtors with the purchase of real property at their request and is listed as a joint tenant on the grant deed. Over one year later, Movant became aware that Debtors had entered into a mortgage forbearance program without providing her any notice or seeking permission. As such, Movant sought counsel to inform Debtors that she no longer wished to co-own the property with them. Debtors disagreed with Movant's claim of ownership. After months of delays and aborted attempts to reach a settlement, Movant commenced the State Court Litigation.

Debtors filed a response explaining that Movant was merely listed as a co-signer for income purposes only and did not contribute financially to the property.

Movant filed a reply stating that she did contribute financially. The arguments raised by both parties relate directly to the State Court Litigation.

Discussion

The bankruptcy court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief to litigate in another forum is predicated on factors of judicial economy. See *Truebro, Inc. v. Plumberex Specialty Products, Inc.* (*In re Plumberex Specialty Products, Inc.*), 311 B.R. 551, 556-557. (Bankr. C.D. Cal. 2004). Moreover, "[t]he validity of [a] claim or contract underlying the claim is not litigated during the [stay relief] hearing." *Johnson v. Righetti* (*In re Johnson*), 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985).

The court finds that the nature of the State Court Litigation warrants relief from stay. Movant has filed a complaint in state court and the issues raised by the Debtors in their response relate to the State Court Litigation. Therefore, judicial economy dictates that the state court proceeding be allowed to continue.

The court shall issue an order modifying the automatic stay as it applies to the Debtors to allow the Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of the judgment

against the Debtors, Chapter 13 Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

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

The court will issue an order.

5. [22-90078](#)-B-13 CERISE CAMERON-GRICE AND MOTION TO CONFIRM PLAN
[EJV](#)-1 JOSEPH GRICE 6-4-22 [[25](#)]
Eric J. Gravel

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.

First, the motion to confirm plan contains insufficient factual grounds and fails to plead with particularity the grounds upon which relief is sought. 11 U.S.C. § 1325(a)(1)-(9), Fed. R. Civ. P. 7(b). Debtors have filed a motion and declaration to accompany the first amended plan filed June 4, 2022, but do not explain how the amended one has changed from the plan filed March 14, 2022. There is no summary of prior events that have brought the Debtors to file and request confirmation of this amended plan.

Second, the plan proposes payments of \$1,515.00 for 2 months, \$2,328.11 for 24 months, and \$2,508.51 for 34 months. However, Schedule J indicates a net income of only \$1,515.16, Debtors have failed to file an amended budget, and Debtors' declaration in support of this motion is silent as to the increased plan payment. Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

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. [19-90986](#)-B-13 NICHOLAS/LORENA JONES MOTION TO MODIFY PLAN
[TLC](#)-1 Tamie L. Cummins 6-6-22 [[41](#)]

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 Debtors 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.

7. [19-90092](#)-B-13 CHRISTOPHER/CARLA
[MSN](#)-4 REYNOLDS
Mark S. Nelson

MOTION TO MODIFY PLAN
6-6-22 [[54](#)]

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 Debtors 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.