

**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: 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
Sacramento, California

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

1.	<u>22-21205</u> -B-13 XAVIER ATES Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-14-22 [<u>20</u>]
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Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay the \$32.00 fee required to file an amended verification and master address list. The court's docket reflects that the default was cured on June 24, 2022.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes and the case SHALL REMAIN PENDING.

The court will issue an order.

2. [21-22719](#)-B-13 ANTHONY MONTOYA MOTION TO CONFIRM PLAN
 [NAR](#)-3 Charles L. Hastings 6-8-22 [[88](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

3. [20-23025](#)-B-13 RAMON PADILLA
[TMO](#)-4 T. Mark O'Toole

MOTION TO MODIFY PLAN
4-28-22 [[110](#)]

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 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.

4. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION FOR CONSENT TO ENTER
[EAT](#)-1 Michael M. Noble INTO LOAN MODIFICATION
Thru #5 AGREEMENT
6-29-22 [[121](#)]

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 enter into a loan modification.

The Bank of New York Mellon, f/k/a The Bank of New York as Trustee for Registered Holders of CWABS, Inc., Asset-Backed Certificates, Series 2007-BC3 ("Creditor") requests entry of an order authorizing Creditor and Debtors to enter into a loan modification agreement and modify Debtors' existing mortgage loan under the terms and conditions set forth in exh. 4, dkt. 125. Creditor and Debtors entered into negotiations for the modification of the existing loan terms post-petition that culminated in an agreement to modify the loan. The unpaid principal balance is adjusted to \$337,793.60, the maturity date of the Note is extended to April 1, 2055, and monthly payment amount is now \$1,573.77 for principal and interest effective June 1, 2022 to resolve the forbearance payments due. The escrow payment is currently \$945.66 and is added to the principal and interest payment for a total payment of \$2,519.43.

The motion is supported by the declarations of Cassandra Richey and Terrence Morley. The declarations affirm Creditor's desire to enter into the post-petition financing agreement.

Debtors agree to the terms of the loan modification as evidenced by their reply at dkt. 129, MMN-4. Debtors state the claim will be treated as Class 4 in the plan and that they will pay for the ongoing mortgage.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

5. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION TO CONFIRM PLAN
[MMN](#)-4 Michael M. Noble 6-1-22 [[107](#)]

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). Oppositions were filed by The Bank of New York Mellon, the Chapter 13 Trustee, and Deutsche Bank National Trust Company.

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 third amended plan.

Feasibility depends on the granting of a loan modification between Debtors and Deutsche Bank National Trust Company. However, no loan modification has been filed by either the Debtors or Deutsche Bank. Debtors contend that they submitted a loan modification application to Franklin Mortgage Credit, aka Deutsche Bank, the day after their bankruptcy petition was filed and that they still have not received a response from Deutsche Bank. Deutsche Bank objects to the amended plan on the basis that the plan only continues to provide for adequate protection payments and does not contemplate how its loan will be paid should a loan modification not be accepted by the Debtors. There appears to be a standstill between Debtors and Deutsche Bank. Without a loan modification for the court to review and approve, the plan is not feasible. 11 U.S.C. § 1325(a) (3) and (6).

On the other hand, the opposition raised by creditor The Bank of New York Mellon is moot since the lender filed a motion to approve loan modification at dkt. 121, EAT-1, and which Debtors accept. Debtors state that the claim is to be treated as a Class 4 claim and that they will pay for the ongoing mortgage.

Nonetheless, due to the lack of an approved loan modification between Debtors and Deutsche Bank, the plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

That said, the court reminds Deutsche Bank of the determination earlier in this case that Deutsche Bank may have violated the automatic stay when it foreclosed on the Debtors' residence and recorded the trustee's sale deed 22 days after the foreclosure sale. The court also reminds Deutsche Bank that the court may address stay violations *sua sponte*. *O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1110 (9th Cir. 2006).

Instead of playing hardball and exacerbating potential damages under 11 U.S.C. § 362(k), in furtherance of its affirmative obligation to remedy any stay violation Deutsche Bank might want to seriously consider the Debtors' request for a loan modification and promptly advance the Debtors' application for the same. The court reminds Deutsche Bank that damages from a stay violation continue until the violation is remedied even if the violation has ceased. *Sundquist v. Bank of America, N.A.*, 566 B.R. 563, 586 (Bankr. E.D. Cal. 2017) (citing *Snowden v. Check Into Cash of Wash., Inc. (In re Snowden)*, 769 F.3d 651, 659 & 662 (9th Cir. 2014)), *vacated in part on other grounds, In re Sundquist*, 580 B.R. 536 (Bankr. E.D. Cal. 2018). Moreover, even a technical violation may warrant an award of attorney's fees. See *Koeberer v. California Bank of Commerce (In re Koeberer)*, 632 B.R. 680 (9th Cir. BAP 2021).

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

The court will issue an order.

6. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[JCW](#)-1 Carl R. Gustafson
Thru #7

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-29-22 [[23](#)]

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 Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$3,320.44 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.

The plan filed May 3, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

7. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[RDG](#)-1 Carl R. Gustafson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-27-22 [[19](#)]

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.

The claim of Moore West Federal Credit Union for a 2012 Harley Davidson is misclassified as a Class 4 claim. Such claims mature after the completion of the plan. However, Debtors stated at the meeting of creditors that the Harley Davidson loan will be paid in full during the life of the plan. Therefore, the Harley Davidson should be

classified as a Class 2 claim that matures before the plan is completed. Due to the misclassification, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed May 3, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

8. [19-25927](#)-B-13 TOBIAS GOMEZ
RK-[5](#) Richard Kwun

MOTION TO APPROVE LOAN
MODIFICATION
7-2-22 [[172](#)]

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 Tuesday, August 9, 2022, at 1:00 p.m.**

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, NA ("Creditor") has agreed to a permanent loan modification that will reduce Debtor's mortgage payment from the current \$1,285.63 a month as listed in the confirmed plan filed September 23, 2019, to \$1,263.16 a month. The modification comes after the Debtor successfully made three trial loan payments. Debtor states that he is not in default on plan payments and that he is current pursuant to a modified plan filed on April 20, 2022. Debtor has filed amended Schedules I and J showing that he can afford to make the new payment.

The motion is supported by the Declaration of Tobias Gomez. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), 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, July 22, 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 the United States trustee 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 August 9, 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 August 9, 2022, at 1:00 p.m.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

10. [22-20534](#)-B-13 JESUS GARCIA-GURROLA MOTION TO CONFIRM PLAN
[ES-2](#) Eric L. Seyvertsen 5-24-22 [[23](#)]

Final Ruling

The motion 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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot.

An amended plan was filed on July 1, 2022. The confirmation hearing for the amended plan is scheduled for August 16, 2022. The earlier plan filed May 24, 2022, is not confirmed.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

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 deny the motion to extend automatic stay, **continue the hearing to October 11, 2022 at 1:00 p.m.** to determine the extent to which the automatic stay of 11 U.S.C. § 362(a) terminates under 11 U.S.C. § 362(c)(3), and set a briefing schedule.

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 June 15, 2022, for failure to timely file documents (case no. 22-21232, dkt. 18).

Separately, Debtor had filed for chapter 13 relief in 2015 (case no. 15-20823) and obtained a discharge. Following the completion of the 2015 case, Debtor lost her job due to COVID-19 pandemic and was unable to make her ongoing mortgage payments to Stockton Mortgage, Inc. ("SMI"). Debtor began the process of selling her home and requested payoff from Stockton Mortgage. Stockton Mortgage provided the requested payoff but, according to Debtor, erroneously included arrears that were paid off and resolved in the 2015 case. Debtor was unsuccessful in getting Stockton Mortgage to correct the payoff statement and, as a result, Debtor was unsuccessful in selling her property. Stockton Mortgage thereafter proceeded with the impending foreclosure, which prompted the prior 2022 case and the instant case.

Opposition by Creditor

SMI filed an opposition stating that an extension should not be granted because the § 362(c)(3)(C) presumption of bad faith applies:

First, SMI states that Debtor failed to sufficiently explain why she and her prior attorney failed to timely file documents in the prior 2022 case despite requesting and being granted an extension to file documents.

Second, the plan undervalues SMI's claim at only \$270,000 rather than \$368,906.06.

Third, the Debtor's proposed adequate protection payments over the span of 12 months is only a fraction of the debt, and Debtor's intent to refinance or sell the property and pay the remaining balance of SMI's loan on or before 12 months is speculative.

Fourth, Debtor's bankruptcy was filed to avoid repayment to SMI. Although Debtor claims that she was unable to sell the property because SMI failed to correct the payoff statement, SMI contends that the Debtor is actually in denial about the extent of her debt owed to SMI.

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 presumption that the present case was filed in bad faith does not apply where the prior case was dismissed because of the failure to file documents if such failure was due to the negligence of a debtor's attorney. See 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).

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 the failure to timely file documents was due to the negligence of Debtor's prior attorney, who was not familiar with bankruptcy practices and believed that a noticed hearing and motion would be required for dismissal of the case rather than an automatic, unnoticed dismissal by the clerk of the court.

The Debtor's prior attorney holds herself out as a significant bankruptcy practitioner. Her website includes the following statement: "2nd chairing bench trial of *Sundquist v. Bank of America* Case No. 14-02578, E.D. of California which resulted in a \$46 million dollar judgement [sic]." See <https://kimharrisonlaw.com/about/>. The court is therefore hard-pressed to believe that the Debtor's prior attorney did not understand what would happen if documents were not timely filed. Moreover, the court's Order on Extension of Deadline to File Missing Documents and Extension of Time for Dismissal of Case (dkt. 12, case no. 22-21232) clearly states that "the clerk of the court shall dismiss this case pursuant to the [Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Are Not Timely Filed (the "NOID")] without further notice if the Debtor(s) does (do) not file the Missing Documents by the extended date set forth above." The deadline to file the missing documents was May 31, 2022. Debtor and her prior attorney failed to file the required documents by that date.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption that this case was not filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. But the analysis does not end there.

Historically, when the automatic stay is not extended and therefore terminates under § 362(c) (3) this court has followed *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011), which holds that the automatic stay of § 362(a) terminates under § 362(c) (3) in its entirety. *Accord Parker v. Mid Valley Services, Inc. (In re Parker)*, 2020 WL 710368 at *1 and n.2 (9th Cir. BAP Feb. 11, 2020); *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509-510 (N.D. Cal. 2016), *appeal dismissed*, No. 16-16584 (9th Cir. Sept. 6, 2018); *Vassallo v. Naiman*, 2012 WL 691783 at *2 (E.D. Cal. March 2, 2012); *United States v. Weldon*, 2011 WL 13247437 at *3 (E.D. Cal. March 22, 2011).

Developments in the § 362(c) (3) analysis over the past several years compel the court to re-examine its position. Several decisions written after *Reswick* (both published and unpublished) make very compelling arguments that, if not extended beyond the thirty-day period, the automatic stay of § 362(a) terminates under § 362(c) (3) only as to the debtor and not as to property of the estate. *In re Madsen*, 639 B.R. 761 (Bankr. E.D. Cal. 2022); *In re Dao*, 616 B.R. 103 (Bankr. E.D. Cal. 2020); *In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011); *In re Ramsey*, 2021 WL 1499319 (Bankr. D. Nev. Feb. 17, 2021).

The Circuits are also split. In the First Circuit, the automatic stay terminates in its entirety. See e.g., *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). In the Fifth Circuit, the automatic stay terminates only as to the debtor. *Rose v. Select Portfolio Services, Inc.*, 945 F.2d 226, 230 (5th Cir. 2019).

The court makes no ruling on this critical issue because neither the opposition nor the motion address it. So although the automatic stay will terminate under § 362(c) (3) thirty days after the petition date because the presumption that this case was not filed in good faith has not been rebutted by clear and convincing evidence, the extent to which the automatic stay terminates, i.e., in its entirety or as to the debtor only and not as to estate property, remains unresolved. And to the extent the court is

inclined to reconsider and reverse its position on *Reswick* in light of *Madsen*, *Dao*, *Rinard*, and *Ramsey*, the court cautions SMI that it could render itself liable for significant damages under 11 U.S.C. § 362(k) for a wilful violation of the automatic stay if it elects - or attempts - to proceed with a foreclosure on the Debtor's residence which undisputedly is property of the estate.

The motion is filed under Local Bankr. R. 9014-1(f)(2), and the court determines that further briefing on the extent to which the automatic stay of § 362(a) terminates under § 362(c)(3) is necessary. The hearing on the Debtor's motion will therefore be continued as to the extent the automatic stay of § 362(a) terminates under § 362(c)(3) and a briefing schedule will be ordered. See Local Bankr. R. 9014-1(f)(2)(C).

A briefing schedule is ordered as follows:

(1) SMI and the Debtor shall each file and serve supplemental points and authorities consistent with the above by September 13, 2022; and

(2) the hearing on the Debtor's motion is continued to October 11, 2022, at 1:00 p.m.

The hearing on the motion is ORDERED DENIED, the hearing on the motion is ORDERED CONTINUED to October 11, 2022 at 1:00 p.m., and FURTHER BRIEFING IS ORDERED for the reasons stated in the minutes.

The court will issue an order.

12. [20-20558](#)-B-13 KAREEM SYKES
[PGM](#)-3 Peter G. Macaluso

MOTION TO MODIFY PLAN
6-10-22 [[95](#)]

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.

13. [22-21174](#)-B-13 STACEY LILLARD
[RDG](#)-1 Ryan Keenan

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-27-22 [[21](#)]

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 May 6, 2022, 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.

14. [22-21087](#)-B-13 MIGUEL ANGEL AGUIRRE AND OBJECTION TO CONFIRMATION OF
[RDG-1](#) NORA ANGEL PLAN BY RUSSELL D. GREER
Ryan C. Wood 6-27-22 [[22](#)]

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.

First, the plan fails to indicate a plan term. 11 U.S.C. § 1325(a)(6).

Second, the plan does not provide for the secured claim of University Credit Union for a 2019 Honda Accord or the secured claim of Ford Motor Creditor for a 2022 Ford Mach-E. Yet both of these claims are listed in Schedule D as secured claims. Without providing these claims in the plan, it cannot be determined whether Debtors intend to pay these creditors or whether Debtors will be able to comply with the plan. 11 U.S.C. § 1325(a)(6).

Third, the vehicle expense of \$865.00 listed on Schedule J appears to be overstated since Debtors' plan lists a Class 4 payment to Chase Auto Finance in the amount of \$571.00. 11 U.S.C. § 1325(a)(3).

Fourth, Debtors' Disclosure of Compensation of Attorney for Debtor states that the agreed upon fee of \$6,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by Debtors and their attorney. These services are included in the "No Look Fee" and should not be excluded.

Fifth, Debtors have failed to provide the Chapter 13 Trustee with a copy of their 2021 State income tax returns. Without this, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to Debtors' general unsecured creditors. 11 U.S.C. § 1325(a)(6) and (b)(1).

Sixth, Debtors' Schedule B includes a 2019 Honda Accord valued at zero dollars and a 2017 Ford Explorer valued at zero dollars. Debtors' Schedule D includes debts on both vehicles. Until Debtors file an amended Schedule B to include the value of the two vehicles, it cannot be determined whether Debtors' plan meets the liquidation test of 11 U.S.C. § 1325(a)(4).

Seventh, it is unclear whether the plan is Debtors' best efforts pursuant to 11 U.S.C. § 1325(b) due to the varying expenses listed in Schedule J including \$360.00 for pet grooming expenses and vaccinations, \$516.00 in business expenses, \$1,100.00 in healthcare expenses for Debtors' elderly father, and a stated household size of 7 that includes Debtors' parents and three adult children.

The plan filed April 29, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

15. [22-20090](#)-B-13 SUSIE/MARK BULMER
[ES-2](#) Eric L. Seyvertsen

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
5-6-22 [[30](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Freedom Mortgage Corporation. The address used by the Debtors appears to be a call center. Moreover, since Debtors' objection relates to Freedom Mortgage Corporation's proof of claim, service of process must be served on the notice address listed on the proof of claim. *Kriegman. v. Bigelow (In re LLS Am., LLC)*, 2012 Bankr. LEXIS 5623, at *4-5 (Bankr. E.D. Wash. 2012); *In re Barker*, 306 B.R. 339 (Bankr. E.D. Cal. 2004). Debtors did not use the notice address listed on Claim No. 7. Therefore, the court's decision is to overrule the objection without prejudice.

The objection is ORDERED OVERRULED WITHOUT PREJUDICE for reasons stated in the minutes. The court will issue an order.

16. [22-21192](#)-B-13 KIMBERLY LEWIS
[RDG](#)-1 Grace S. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-27-22 [[14](#)]

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 May 10, 2022, 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.

17. [21-23996](#)-B-13 SANDRA DAVIS
GT-[3](#) Eric John Schwab

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
AND/OR MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
6-15-22 [[65](#)]

DEBTOR DISMISSED: 06/16/22

Final Ruling

No appearance at the July 19, 2022, hearing is required. The case was dismissed on June 16, 2022. Therefore, the motion to extend deadline to file a complaint is moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

18. [22-21197](#)-B-13 HAROLD/DAMETRA JACKSON OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Len ReidReynoso PLAN BY RUSSELL D. GREER
6-28-22 [[18](#)]

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)(2) 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 May 11, 2022, 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 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

No appearance at the July 19, 2022, hearing is required. This matter was continued from July 12, 2022, to provide the Debtor until 5 p.m. on Friday, July 15, 2022, to file a declaration from his daughter stating her willingness and ability to make increased monthly financial contributions for the duration of Debtor's plan. A declaration was timely filed.

The modified plan filed May 25, 2022, complies with 11 U.S.C. §§ 1322 and 1325(a) 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.