

**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: August 6, 2024

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

August 6, 2024 at 1:00 p.m.

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1. [24-23014](#)-B-13 SENGPHET/SYPHONG MOTION TO EXTEND AUTOMATIC STAY
 [MJD](#)-1 PHIMMASENE 7-23-24 [[11](#)]
 Matthew J. DeCaminada

Tentative 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 and may appear at the hearing to offer oral argument.

The court's decision is to grant the motion to extend automatic stay.

Debtors seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on June 3, 2024, for failure to make plan payments (case no. 23-23294, dkt. 46). 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). This motion was filed within 30 days of the filing of the instant chapter 13 case.

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).

The Debtors state that they fell behind on plan payments in the prior case because Debtor Sengphet Phimmasene was employed only as a temporary employee and ultimately could not keep up with both household expenses and plan payments. Since then, Debtor has become a full-time, permanent employee and has had an increase in income.

The Debtors have 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.

August 6, 2024 at 1:00 p.m.

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

The court will issue an order.

2. [24-21920](#)-B-13 RICARDO/SAMANTHA CONTINUED OBJECTION TO
[LGT-1](#) RODRIGUEZ CONFIRMATION OF PLAN BY LILIAN
Thru #3 Charles L. Hastings G. TSANG
6-27-24 [[19](#)]

Final Ruling

Before the court is the Chapter 13 Trustee's ("Trustee") objection, dkt. 19, and supplemental objection, dkt. 28, to confirmation of the May 3, 2024, chapter 13 plan, dkt. 3, filed by Debtors Ricardo and Samantha Rodriguez ("Debtors"). The hearing on July 16, 2024, was continued at the Debtors' request, dkt. 31, to allow the Debtors to file a reply to the Trustee's supplemental objection which they filed on July 30, 2024. Dkt. 41. The court has reviewed all documents related to the objection. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

The court's decision is to sustain the Trustee's objection and not confirm the plan.

The Trustee and Debtors disagree about the disposable income available to be applied to make payments to unsecured creditors. The Trustee states that there is \$2,196.36 per month available for 60 months (which would result in a 100% dividend to general unsecured creditors) based on Form 122C-2, line 45, dkt. 27. Debtors' plan proposes 0% distribution to general unsecured creditors.

Debtors' reply states that they only have a monthly net income of \$1,548.50 after all expenses are paid based on Schedule J, dkt. 1, line 23. The plan filed May 3, 2024, proposes monthly plan payments of \$1,500.00 for 60 months, or a total payment into the plan of \$90,000. Debtor's priority claims total \$54,273.55 and nonpriority unsecured claims total \$64,785.56, or a total of \$119,059.11.

Debtors' request to use the net monthly income amount of \$1,548.50 on line 23 of Schedule J rather than the \$2,196.36 established by line 45 on Form 122C-2 as the disposable income that must be committed to the plan is improper and impermissible, at least on the record before the court. *In re Davis*, 2017 WL 4898166, *1 n.2 (Bankr. C.D. Ill. 2017) ("For above-median income debtors, disposable income is not determined by netting Schedules I and J."). As one court explained in the course of rejecting a request to disregard Form 122C-2 and instead rely on Schedule J net income to establish disposable income:

Prior to the use of Form 122C-2, as directed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), bankruptcy courts determined a debtor's disposable income by deducting the debtor's expenses on Schedule J from income shown on Schedule I, subject to the court's review of the necessity and reasonableness of the claimed expenses. *In re Cox*, 393 B.R. 681, 685 (Bankr. W.D. Mo. 2008). With the enactment of BAPCPA, though, Congress developed a standardized, bipartite procedure that eliminated much of the bankruptcy court's discretion in chapter 13 cases of above-median debtors. Now an above-median income chapter 13 debtor must complete Form 122C-1 and Form 122C-2. A completed Form 122C-1 calculates the debtor's current monthly income while a completed Form 122C-2 calculates the debtor's disposable income. This mechanical approach serves as a presumption of the debtor's disposable income that may be rebutted by any party (trustee or debtor) with evidence of known or virtually certain future events that might affect 'projected' income.

In re Price, 609 B.R. 475, 478 (Bankr. N.D. Tex. 2019).

Debtors have submitted no evidence that would allow the court to deviate from the disposable income established by Form 122C-2. The Trustee's objection will therefore be sustained. The Debtors' May 3, 2024, plan will not be confirmed.

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

The court will issue an order.

3. [24-21920](#)-B-13 RICARDO/SAMANTHA MOTION TO DISMISS CASE
 [LGT-1](#) RODRIGUEZ 6-17-24 [[12](#)]
 Charles L. Hastings

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion, and it is consistent with the Debtor's opposition filed to the motion. The motion is therefore dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041. The case will proceed in this court.

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

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 the motion to dismiss case.

The Chapter 13 Trustee moves for dismissal of the plan on grounds that there is a material default by the Debtor with respect to a term of a confirmed plan, 11 U.S.C. § 1307(c)(6), and the plan is terminated since it was a proposed 60-month plan, and month 60 was January 2024. 11 U.S.C. § 1307(c)(8); see also *Kinney v. HSBC Bank USA, N.A. (In re Kinney)*, 5 F.4th 1136, 1140-43 (10th Cir. 2021), *cert. denied*, 143 S. Ct. 302 (2022).

Debtor failed to make all payments under the plan. As of June 2024, the total claims require an aggregate payment of \$34,495.01. Debtor has paid only \$33,917.25. Therefore, the remaining claims, plus trustee's compensation, that need to be paid total \$577.76.

Since Debtor's assets are over encumbered based on the filed schedules and Debtor has claimed exemptions in the remaining assets, dismissal rather than conversion is in the best interest of creditors and the estate.

Cause exists to dismiss this case. The motion is granted and the case will be dismissed.

The motion is ORDERED GRANTED and the case is dismissed.

The court will prepare an order.

5. [24-21946](#)-B-13 DANA BUCKINGHAM ORDER TO SHOW CAUSE - FAILURE
Thru #6 T. Mark O'Toole TO PAY FEES
6-10-24 [[14](#)]

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 \$79.00 due June 4, 2024. The court's docket reflects that the default was cured on June 12, 2024. The payment constituted the final installment.

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.

6. [24-21946](#)-B-13 DANA BUCKINGHAM CONTINUED OBJECTION TO
LGT-1 T. Mark O'Toole CONFIRMATION OF PLAN BY LILIAN
G. TSANG
6-28-24 [[19](#)]

CONTINUED TO 9/10/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/04/24.

Final Ruling

No appearance at the August 6, 2024, hearing is required. The court will issue an order.

7. [24-21686](#)-B-13 JAYESH PATEL CONTINUED OBJECTION TO
[LGT](#)-1 David C. Johnston CONFIRMATION OF PLAN BY LILIAN
G. TSANG
6-26-24 [[35](#)]

Final Ruling

This matter was continued from July 16, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, July 19, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 40, sustaining the objection, shall become the court's final decision. The continued hearing on August 6, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.