

**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 13, 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 13, 2024 at 1:00 p.m.

- | | | |
|----|--|---|
| 1. | <u>24-22700</u> -B-13 NATALIE PELTON
<u>RJ-1</u> Richard L. Jare | CONTINUED MOTION TO VALUE
COLLATERAL OF EXETER FINANCE
LLC
6-25-24 [<u>12</u>] |
|----|--|---|

Final Ruling

An order on stipulation resolving debtor's motion to value collateral of Exeter Finance LLC was entered on August 6, 2024, and the hearing set for August 13, 2024, was vacated.

The court will issue an order.

August 13, 2024 at 1:00 p.m.

2. [24-21632](#)-B-13 MARTIN VEGA
[AF-1](#) Arasto Farsad

MOTION TO CONFIRM PLAN
6-19-24 [[16](#)]

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.

A second amended plan was filed on July 11, 2024. The confirmation hearing for the second amended plan is scheduled for September 3, 2024. The first amended plan filed June 19, 2024, is not confirmed.

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

The court will issue an order.

3. [24-20254](#)-B-13 MARLON MAYO MOTION TO DISMISS CASE
 [EAM](#)-3 Peter G. Macaluso 7-2-24 [[67](#)]

CONTINUED TO 9/17/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM.

Final Ruling

No appearance at the August 13, 2024, hearing is required. The court will issue an order.

4. [24-21561](#)-B-13 RONALD PERRIN AND YUVETTA
[RDW](#)-2 PRYOR
G. Michael Williams
OBJECTION TO CONFIRMATION OF
PLAN BY PAUL J. NEWMAN, TRUSTEE
OF THE PAUL J. NEWMAN TRUST
DATED 10/7/1992 AND RESTATED ON
5/30/2013
7-12-24 [[40](#)]

Final Ruling

Debtors Ronald Perrin and Yuvetta Pryor ("Debtors") have yet to file, set, and serve a notice of hearing on motion to confirm the first amended plan filed June 20, 2024. Dkt. 37. The § 341 meeting of creditors has not been concluded and is continued to September 4, 2024. Yet, creditor Paul J. Newman, Trustee of the Paul J. Newman Trust, has filed an objection to confirmation of the first amended plan, dkt. 40, and set the objection for hearing on August 13, 2024, at 1:00 p.m. Dkt. 41.

It is **ORDERED** that a hearing on confirmation of the first amended plan filed June 20, 2024, is **SET on September 24, 2024, at 1:00 p.m.** Debtors shall provide notice of this hearing to all required parties in interest by **August 16, 2024.**

IT is **FURTHER ORDERED** that creditor's objection is **CONTINUED** to **September 24, 2024, at 1:00 p.m.**

The court will issue an order.

5. [24-21266](#)-B-13 LANA CHURCHILL
[JCK](#)-3 Gregory J. Smith
Thru #6

MOTION TO VALUE COLLATERAL OF
ONEMAIN
6-18-24 [[47](#)]

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 value the secured claim of Onemain at \$4,771.00.

This is Debtor's third attempt to value the secured claim of OneMain ("Creditor"). Debtor is the owner of a 2014 Nissan Versa ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,771.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 7-2 filed by OneMain Financial Group, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of \$14,814.95. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$4,771.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

6. [24-21266](#)-B-13 LANA CHURCHILL
[JCK](#)-4 Gregory J. Smith

MOTION TO CONFIRM PLAN
6-28-24 [[57](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

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 the automatic stay.

Debtor 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 Debtor's prior bankruptcy case was dismissed on February 9, 2024, at Debtor's request (case no. 23-22580, dkt. 71). 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 Debtor asserts that the prior chapter 13 case was filed to prevent Specialized Loan Servicing ("SLS"), the servicer of the second mortgage on Debtor's home, from foreclosing on the property. Debtor had believed that the second mortgage had been discharged in a prior chapter 7 bankruptcy filed with her late husband. After the chapter 7 bankruptcy was discharged, Debtor did not receive any billing statements or notices from SLS. Debtor did not learn about the debt until SLS served a notice of default. When Debtor reached out to SLS to see what her options were, SLS was not willing to work with her at that time because the debt was only in her husband's name. Thereafter, Debtor filed for chapter 13 relief and SLS reached out to Debtor proposing to restructure the loan. As a result, Debtor chose to dismiss her case. After several rounds with SLS, SLS's way of restructuring the loan was for Debtor to pay a lump sum of \$20,000 up front, which Debtor was unable to do. For that reason, Debtor had no choice but to file the present chapter 13 case in order to save her home.

Debtor contends that her circumstances have changed because her grandson will provide monthly financial contributions to the household as stated in his declaration. Debtor also continues to be self-employed as a Door Dash delivery driver and she is still receiving social security and pension benefits.

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.

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, Debtors' filed Form 2030 Disclosure of Compensation of Attorney for Debtors states at Line 6 that the agreed upon fee of \$10,000.00 does not include representation of debtors in any 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. This same opposition was raised by the Chapter 13 Trustee and sustained on March 28, 2024.

Second, Debtors have failed to provide the Trustee with business documents including six months of profit and loss statements and copies of Debtors' liability riders and workers' compensation riders, if applicable, for Debtors' businesses. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This same opposition was raised by the Chapter 13 Trustee and sustained on March 28, 2024.

Third, the Attachment to Schedule I which provides for Debtors' business income and expenses needs to be filed. Without this document, 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), (b)(1). This same opposition was raised by the Chapter 13 Trustee and sustained on March 28, 2024.

Fourth, Schedule J must be amended because it includes inappropriate mortgage expense and vehicle installment deductions. Debtors' Schedule J calculated a net disposable income of \$2,558.00 and yet the Debtors have proposed a monthly plan payment of \$5,808.00 in months 1 through 6 and \$3,606.00 thereafter. The plan is not feasible. 11 U.S.C. § 1325(a)(6). This same opposition was raised by the Chapter 13 Trustee and sustained on March 28, 2024.

Fifth, Debtors are delinquent \$10,538.00. The next scheduled payment of \$3,606.00 is due on August 25, 2024. The Debtor has paid \$27,916.00 into the plan to date.

Sixth, the plan provides contradictory language regarding payment to creditor Nationstar Mortgage at Section 7.02 and Section 3.07 of the plan. Nationstar Mortgage filed Claim 8-1 listing pre-petition arrears of \$3,855.68 and a post-petition mortgage payment of \$3,700.90. Since the claim was delinquent at the time of filing, the correct classification is as a Class 1 claim, and the non-standard provision providing for Debtors to make direct post-petition payments is inappropriate.

Seventh, the plan fails to provide for payment of LV Landlord's administrative claim, does not provide adequate funding for administrative claims and the payments to general unsecured claims, and fails to provide for setoff of LV Landlord's security deposit.

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.

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.

Debtor 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 Debtor's prior bankruptcy case was dismissed on May 23, 2024, for delinquency in plan payments (case no. 23-21833, dkt. 25). 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). 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 asserts that her circumstances have changed because she has hired a new attorney in the present case after her previous attorney failed to appear at hearings in the prior case, and because her brother will be assisting her with payments as stated in his declaration. Debtor contends she is filing her case in good faith in order to repay her creditors and keep her home.

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.

10. [23-23486](#)-B-13 ROBERT BOYLE
[TLC](#)-1 Tamie L. Cummins

MOTION TO MODIFY PLAN
6-11-24 [[25](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

11. [23-21491](#)-B-13 LINDA SAEFONG AND KAO
[MC-4](#) SAEPHAN
Muoi Chea

CONTINUED MOTION TO MODIFY PLAN
6-14-24 [[62](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

12. [24-21893](#)-B-13 LUCINDA/HENRY COLEMAN CONTINUED OBJECTION TO
[LGT](#)-1 Le'Roy Roberson CONFIRMATION OF PLAN BY LILIAN
G. TSANG
6-17-24 [[16](#)]

Final Ruling

This matter was continued from August 6, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, August 9, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 21, sustaining the objection, shall become the court's final decision. The continued hearing on August 13, 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.