

**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 18, 2020

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 18, 2020 at 1:00 p.m.

-
1. [20-21000](#)-B-13 FRANK/VERONICA FERRIERA MOTION TO CONFIRM PLAN
[TBK](#)-2 Taras Kurta 7-14-20 [[40](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtors having filed a notice of withdrawal of their motion, the motion 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.

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

August 18, 2020 at 1:00 p.m.

2. [18-25722](#)-B-13 MOSES/APRIL GONZALES
[GSJ](#)-5 Grace S. Johnson

MOTION TO MODIFY PLAN
7-1-20 [[74](#)]

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.

3. [19-23232](#)-B-13 DAVID VEDDER
[JGL](#)-3 Jennifer G. Lee

MOTION TO MODIFY PLAN
7-2-20 [[91](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). The plan must provide for the correct post-petition arrears owed to Select Portfolio Servicing, plan payments to Select Portfolio must be increased in order to pay the claim in full in 48 months, and the total monthly plan payment of \$3,675.00 must be increased to at least \$3,944.00 in order for the plan to pay general unsecured creditors 0% as proposed by the Debtor.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

4. [20-20937](#)-B-13 JOSE PENA
[MJH](#)-1 Mark J. Hannon

MOTION TO CONFIRM PLAN
7-8-20 [[48](#)]

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.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Chapter 13 Trustee objects to confirmation on various grounds:

First, Debtors' plan fails to provide for post-petition arrears totaling \$8,669.98 to Class 1 creditor Shellpoint Mortgage Servicing, LLC ("Shellpoint").

Second, Debtors' plan fails to suspend monthly dividends to secured creditors.

Third, Debtors' failed to file supplemental Schedule I and/or Schedule J to support plan payment(s) moving forward.

Fourth, the plan provides for monthly plan payments of \$4,039.93 to resume on September 2020 but, based on Trustee's calculation, the average plan payment will need to be at least \$4,212.00.

Fifth, Debtors' payout schedule does not match the Trustee's record for the months 1 through 27 (April 2018 through June 2020). Trustee requests that the proposed any order include the following language: "All previously disbursed amounts made to secured creditor, Shellpoint Mortgage Servicing LLC, and attorney fees are allowed in the amount already paid by the trustee."

Sixth, if payments to Shellpoint will resume beginning September 2020 (month 31), the dividend should increase from the amount proposed of \$1,458.32 to \$1,576.19 to pay this claim in full.

Response by Debtor

Debtors filed a response requesting confirmation of their plan since the issues raised by the Trustee are resolved.

First, Debtors state that they have paid the post-petition arrears in full that are owed to Shellpoint between the months of June 2020 and August 2020.

Second, payments to Shellpoint will be suspended from August 2020 through October 2020 and Debtors anticipate Shellpoint filing a Notice of Mortgage Forbearance on or before the date of the hearing of this motion to modify. Nothing has been filed by Shellpoint.

Third, Debtors filed as an exhibit a declaration of current and post-petition income and expenses. A review of the exhibits shows that the Debtors filled out a form from the Central District of California, which is not accepted in the Eastern District of

California. Moreover, amended schedules are to be filed as a separate docketed entry and not as an exhibit.

Fourth, Debtors agree that the average monthly plan payment beginning September 2020 must be at least \$4,212.00.

Fifth, Debtors agree to including in any order confirming the language requested by the Trustee: "All previously disbursed amounts made to secured creditor, Shellpoint Mortgage Servicing LLC, and attorney fees are allowed in the amount already paid by the trustee."

Sixth, the monthly dividend paid to Shellpoint should be increase from \$1,458.32 to \$1,576.19 to pay this claim in full.

Discussion

The Debtors provide no evidence in the form of a declaration or exhibits that payments to Shellpoint will be suspended from August 2020 through October 2020. Additionally, no Notice of Mortgage Forbearance has been filed by Shellpoint. Separately, the Debtors have not filed amended schedules as a separate docket entry to support their ability to make plan payments. Therefore, the modified plan is not confirmable.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

6. [20-22859](#)-B-13 MARY WARD
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-20-20 [[16](#)]

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). Nonetheless, 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 overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 23, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020, at 1:00 p.m. The earlier plan filed June 3, 2020, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

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).

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the Debtor has failed to provide Trustee with copies of Debtor's proof of income as required by 11 U.S.C. §521(a)(1)(B)(iv) and LBR 1007-1.

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(I).

Fourth, the Debtor's plan fails the liquidation test. Based on Debtor's schedules, Debtor has non-priority general unsecured claims totaling \$79,956.00 and non-exempt assets of \$95,781.89 available for distribution to general unsecured creditors. In order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtor's plan must pay 100% to Debtor's general unsecured creditors, plus interest at the Federal Judgment Rate of 0.17% since the value of the non-exempt assets exceeds the amount of the general unsecured claims. Debtor's plan only pays 15% and it therefore fails the liquidation test.

Fifth, the Debtor cannot afford any proposed plan payment. According to Debtor's schedules, Debtor's monthly income is \$3,471.45 and her monthly expenses total \$4,364.00.

Sixth, the Debtor's plan does not provide for the secured claim of Wells Fargo Bank, N.A., which filed a secured claim in the amount of \$14,288.70. Claim No. 1. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

The plan filed June 3, 2020, 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.

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.

9. [20-20071](#)-B-13 KIM WALKER
[PLG](#)-3 Rabin J. Pournazarian

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
7-14-20 [[54](#)]

Final Ruling

This matter was continued from August 4, 2020, to allow opposition or response to be filed by any party in interest. No opposition or response was filed. Therefore, the court's conditional ruling at docket 65 shall be the court's final decision.

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

The court will issues an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Debtors 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on July 16, 2020, after Debtors filed an ex parte motion to voluntarily dismiss their case (case no. 18-27891, dks. 87, 92). 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).

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 their circumstances have changed because in the prior case Debtor Lawrence Boldon had a reduction in income and was subsequently laid off from his employment as a result of the COVID-19 pandemic. Debtor has now returned to work. The new plan is based on Debtors' current income situation and Debtors contend that it is more likely they will successfully complete this plan.

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.

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

The court will issue an order.

11. [19-25989](#)-B-13 ANGELINA/MIGUEL PEINADO
[EAT](#)-1 Michael M. Noble

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
1-23-20 [[89](#)]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling

Motion is continued to September 8, 2020 at 1:00 p.m. This matter was continued from July 21, 2020, by court order. The parties were required to file a joint status report. A joint status report was timely filed on August 11, 2020. Movant The Bank of New York Mellon stated that it does not oppose the further continuance of this matter to September 8, 2020, at 1:00 p.m. in order to be heard concurrently with the Debtor's confirmation hearing.

The motion is ORDERED CONTINUED TO September 8, 2020 at 1:00 p.m. for reasons stated in the minutes.

The court will issues 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not confirm the first amended plan.

First, the plan provides for Shellpoint Mortgage Servicing ("Shellpoint") as a Class 1 creditor to be paid a post-petition mortgage payment of \$1,500.00 per month as adequate protection. Shellpoint has filed a proof of claim listing a post-petition mortgage payment of \$2,160.82. Debtors' plan proposes an impermissible modification of the first mortgage on Debtors' principal residence, which is not permitted under 11 U.S.C. §1322(b)(2).

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors' plan lists a claim owed to Shellpoint in Class 1 with pre-petition arrears of \$7,146.83, but fails to provide for a monthly dividend payable to those arrears. A Notice of Mortgage Payment Change was filed by Shellpoint on May 21, 2020, indicating a temporary forbearance for 3 months, effective May 1, 2020. Debtors have failed to indicate the effects of the forbearance on their plan and scheduled payments to Shellpoint.

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.

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.