

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: August 24, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

August 24, 2021 at 1:00 p.m.

1. [20-90613](#)-B-13 OVIDIO/ANGELICA BARAHONA MOTION TO CONFIRM PLAN
[BSH](#)-4 Brian S. Haddix 7-20-21 [[71](#)]

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 Debtors have 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 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.

August 24, 2021 at 1:00 p.m.

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 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 permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. §1325(a)(2). Debtor has failed to make the payments proposed in the plan and is delinquent \$2,255.00.

Second, Debtor has failed to provide evidence of her son's desire and willingness to make the proposed plan payment on behalf of his mother. This issue was raised previously and has not been resolved.

Third, a monthly dividend of \$569.09 is needed to pay the post-petition arrears of \$3,983.63 owed to Class 1 creditor JPMorgan Chase in months 30 through 36 (October 2021 through April 2022). Without providing for the correct amount in post-petition arrears, it cannot be determined whether the Debtor's plan is feasible.

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.

3. [17-91032](#)-B-13 JOSEPH/TERI FREITAS
[JAD](#)-1 Jessica A. Dorn

MOTION TO MODIFY PLAN
7-15-21 [[47](#)]

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 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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to modification of the plan on grounds that Debtors are delinquent \$1,629.00.

Debtors filed a response stating that they were not able to mail their July payment until July 31, 2021. The July payment posted on August 2, 2021. Debtors state that moving forward they will make their payments timely. Debtors also propose to fix the total amount paid into the plan in the order confirming.

The modified 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 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

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

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

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 21, 2021, due to failure to timely file documents (case no. 21-90261, dkt. 13). 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 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).

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).

Debtor's prior chapter 7 case was filed by a different attorney than in the present case. Although "new case documents" were due on June 16, 2021, the attorney did not file any such documents and the case was dismissed on June 21, 2021. The creditor matrix filed with the petition was deficient as well. The entire chapter 7 case was ill-advised since the Debtor's intention was to cure over time the defaults on a home loan which the Debtor believed had been modified many years ago.

Debtor's present case was filed in good faith to deal with the delinquent home loan. The prejudice to creditors is slight, especially considering the home lender delayed enforcing its rights for almost 10 years before filing a notice of default to foreclose on the Debtor's home. The plan in the present case is expected to provide for full payment of all claims, whether secured, priority or unsecured.

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 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 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 permit the requested modification and not confirm the modified plan.

First, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7 of Debtor's plan proposes a monthly payment of \$3,269.00 for 31 months (May 2020 through November 2022), then \$4,306.00 for 29 months (December 2022 through April 2025). Debtor has failed to file supplemental Schedules I and/or Schedule J to support the plan payment of \$4,306.00 beginning December 2022 (month 32). Without updated schedules, it cannot be determined whether the proposed plan is feasible.

Second, all sums required by the plan have not been paid. 11 U.S.C. §1325(a)(2). Debtor has failed to make the payments proposed in the plan and is delinquent \$869.00.

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. [18-90157](#)-B-13 CHRIS HARR AND ROSE
[TPH](#)-1 GOMES- HARR
Thomas P. Hogan

MOTION TO INCUR DEBT
7-22-21 [[21](#)]

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 refinance.

Debtors seek court approval to refinance real property commonly known as 511 Traina Drive, Patterson, California ("Property") with Chicago Title Company ("Creditor") to pay off their existing mortgage with M&T Bank and to pay in full their Chapter 13 plan. The refinance amount is \$362,230.00, the estimated debt on the existing mortgage is \$237,000.00, and the estimated payoff to the plan is \$106,200.00.

The motion is supported by the Declaration of Chris Harr and Rose Harr. The Declaration affirms Debtors' desire to refinance the Property.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.
2. The Trustee shall approve the Title Company and Escrow Company to be used in connection with the refinance. His approval shall not be unreasonably withheld.
3. The Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

The repayment of the new loan does not appear to unduly jeopardize Debtor's performance of the plan filed March 12, 2018, and in fact pays it off. The motion complies with the provisions of 11 U.S.C. § 364(d) and will be granted.

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

The court will issue an order.

7. [19-90897](#)-B-13 KATHLEEN ROWE-GLENDON MOTION TO MODIFY PLAN
[PLG](#)-3 Steven A. Alpert 7-6-21 [[53](#)]

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.

8. [18-90154](#)-B-13 EDWARD/KAREN WICKMAN
Michael R. Germain

MOTION TO SELL
8-11-21 [[164](#)]

Final Ruling

Debtors Edward Wickman and Karen Wickmen ("Debtors) filed a motion to sell on only 13 days' notice.¹ See Local Bankruptcy Rule 9014-1(f)(3). Problematic is that this motion was not accompanied with an order shortening time, no creditors in this case were properly served, Debtors' attorney on record Michael Germain was not properly served, the no exhibits were filed showing any sales contract or arms' length transaction. See also dkt. 161.

For the issues stated above, the motion to sell is denied without prejudice.

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

The court will issue an order.

¹Debtors also have filed a motion to withdraw attorney Michael Germain as attorney of record and scheduled the motion to be heard on August 24, 2021, at 1:00 p.m. Problematic is that that motion was filed on only 11 days' notice, was not accompanied with an order shortening time, no creditors were properly served, and Debtors' attorney on record Michael Germain was not properly served.