

**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: September 22, 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

**September 22, 2020 at 1:00 p.m.**

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1. [20-22306](#)-B-13 MARCEL/SIKWAYI DAWSON OBJECTION TO CLAIM OF LVNV  
[CRG](#)-2 Carl R. Gustafson FUNDING, LLC, CLAIM NUMBER 5  
**Thru #2** 7-23-20 [[42](#)]

**Final Ruling**

Creditor LVNV Funding, LLC filed a withdrawal of its Claim No. 5-1 on August 4, 2020. Dkt. 52. Debtors' objection to Claim No. 5-1 is overruled as moot.

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

The court will issue an order.

2. [20-22306](#)-B-13 MARCEL/SIKWAYI DAWSON OBJECTION TO CLAIM OF LVNV  
[CRG](#)-3 Carl R. Gustafson FUNDING, LLC., CLAIM NUMBER 6  
7-23-20 [[45](#)]

**Final Ruling**

Creditor LVNV Funding, LLC filed a withdrawal of its Claim No. 6-1 on August 4, 2020. Dkt. 52. Debtors' objection to Claim No. 6-1 is overruled as moot.

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

The court will issue an order.

**September 22, 2020 at 1:00 p.m.**

3.     [20-20610](#)-B-13   JOSHUA/AMANDA GOMEZ                   MOTION TO MODIFY PLAN  
       [JCK](#)-2            Gregory J. Smith                   8-13-20 [[35](#)]  
       WITHDRAWN BY M.P.

**Final Ruling**

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

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

4. [20-23544](#)-B-13 CIPRIANO SULAMO  
Pro Se

MOTION TO CONFIRM PLAN  
8-14-20 [[18](#)]

CONTINUED TO 10/13/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS.

**Final Ruling**

No appearance at the September 22, 2020, hearing is necessary. The court will issue an order.

**Final Ruling**

The motion has been set for hearing on the notice required by 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). The Chapter 13 Trustee and creditor The Money Source Inc. filed responses to the motion. Debtors filed a reply.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 9037 Stonewood Drive, Stockton, California ("Property"). The mortgage holder is The Money Source, Inc. and the mortgage has always been paid directly as a Class 4 claim. The purchase price is \$391,000 and the mortgage balance is approximately \$278,996 according to Claim No. 17-1, leaving a gross equity of approximately \$112,004. Given the approximate balance to pay off the plan at 100% is \$56,000, there will be sufficient funds to pay off the plan in full.

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 sale 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 escrow and title company to be used in connection with the transaction.
3. The Trustee shall approve the estimated closing statement to be prepared in connection with the sale, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

The Money Source Inc.'s request for additional language regarding the timeline of the sale is denied. Creditor's request for language to be paid off in full according to the payoff demand is denied as moot since this request is encompassed by the additional language requested by the Trustee.

Debtors' reply states that the additional language requested by the Trustee will be included in the order approving the sale.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

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

Debtors' counsel shall prepare an order consistent with the foregoing terms which shall be submitted to the Trustee and counsel for The Money Source, Inc., for approval as to form.

6. [20-20657](#)-B-13 ALICE MARIANO  
[GS-1](#) Gary S. Saunders  
DEBTOR DISMISSED: 8/20/20

MOTION TO CONFIRM PLAN  
8-17-20 [[80](#)]

**Final Ruling**

The case was dismissed on August 20, 2020. The motion to confirm plan is denied as moot.

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

The court will issue an order.

7. [20-23258](#)-B-13 LORETTA DITTRICH MOTION TO CONFIRM PLAN  
[RS-1](#) Richard L. Sturdevant 8-17-20 [[15](#)]

**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 has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the court's closure due to the COVID-19 pandemic, 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 the 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.

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 July 30, 2020, due to Debtor's failure to set a timely confirmation hearing pursuant to 11 U.S.C. § 1324(b) (case no. 20-21419, dkts. 36, 40). 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 Declaration of Shahar A. Jones states that due to the COVID-19 pandemic, his counsel's staff was limited, working remotely, and did not process an order confirming plan even through the initial plan filed March 10, 2020, in case no. 20-21419, was feasible and confirmable. If that were the case, then the problem would be that neither the motion nor declaration explain how Debtor's financial or personal affairs - or even counsel's office operations - have substantially changed such that the Debtor will be able to timely confirm a plan in this case. Fortunately for the Debtor, the court's recollection of the reason for the dismissal of the Debtor's prior Chapter 13 case differs.

The Debtor's prior Chapter 13 case was not dismissed because an order confirming a supposedly confirmable initial plan was not timely processed by Debtor's counsel or his staff. It was dismissed because the Debtor's counsel filed an amended plan - after supposedly filing a confirmable initial plan - which triggered a confirmation hearing beyond the 45-day period under 11 U.S.C. § 1324(b). See Case No. 20-21419, Dkt. 40. That the confirmation hearing in this case is noticed and set within the § 1324(b) time frame is a changed personal circumstance.

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 of 11 U.S.C. § 362(a) is extended as to all parties (and parties in interest) and for all purposes.

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

The court will issue an order.

9. [20-23181](#)-B-13 DAMION GOEDE  
[RDG](#)-2 Nima S. Vokshori

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
8-17-20 [[17](#)]

### **Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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 overrule as moot the objection to California Exemptions.

The Trustee objects to the Debtor's use of the California exemptions since the Debtor did not reside in California for 730 days preceding the filing of his Chapter 13 bankruptcy. See 11 U.S.C. § 522(b)(3).

The court's review of the docket reveals that the Debtor filed amended Schedule C to utilize the Nevada exemptions. Therefore, the Trustee's objection is overruled as moot.

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

The court will issue an order.

10. [20-22587](#)-B-13 STEVEN BROWN  
[JCK](#)-2 Gregory J. Smith  
DEBTOR DISMISSED: 8/26/20

MOTION TO CONFIRM PLAN  
7-29-20 [[21](#)]

**Final Ruling**

The case was dismissed on August 26, 2020. The motion to confirm plan is denied as moot.

The motion is ORDERED DENIED AS MOOT 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. So, too, was a reply.

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 the 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.

First, the modified plan is not feasible under 11 U.S.C. § 1325(a)(6) and it is filed in bad faith under 11 U.S.C. § 1325(a)(3). The modified plan provides for payment of Claim No. 14-1 of Asset Management Holdings, II LLC that was disallowed by the court for being untimely. See Dkts. 100, 101. The Chapter 13 Trustee ("Trustee") states that he does not oppose an additional provision that provides for this claim after all other allowed claims are paid. Despite the Trustee's concession, in their reply, the Debtors insist on paying Asset Management's disallowed claim (and ask the court to instruct the Trustee to do so) through the modified plan and on par with all other allowed claims. See dkt. 117 at 1:18-20. The court will not ignore its own order disallowing Asset Management's claim or Bankruptcy Rule 3021 which limits distributions under confirmed plans to *allowed* claims, and the Debtors' request for the court to do so is bad faith and borders on the sanctionable. See *In re Thompson*, 570 B.R. 336, 343 (Bankr. E.D. Okla. 2017) ("Fed. R. Bankr. P. 3021 provides that Trustee can only make distributions to creditors whose claims have been allowed, not on claims that are disallowed[.]"); see also *In re Robinson*, 225 B.R. 228, 234 (Bankr. N.D. Okla. 1998) (plan proposing payment of disallowed claim cannot be confirmed because it does not comply with the operative provisions of the Bankruptcy Code).

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7.02 of Debtors' plan provides for an average monthly plan payment of \$1,372.22 from September 2020 through May 2024. The debtors have failed to provide admissible evidence that the plan is mathematically feasible. Debtors' average plan payment will need to be at least \$1,482.00 in order for the plan to be feasible as proposed paying unsecured creditors 100% and to pay disallowed Claim No. 14-1.

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.