

**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: October 5, 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
Sacramento, California

October 5, 2021 at 1:00 p.m.

1. [20-24822](#)-B-13 NORBERTO ROSARIO RIVERA MOTION TO MODIFY PLAN
[JCK](#)-3 Gregory J. Smith 8-16-21 [[49](#)]

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.

October 5, 2021 at 1:00 p.m.

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 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 August 4, 2021, for failure to make plan payments (case no. 20-23338, dkt. 41). 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 Debtor asserts that she fell behind on plan payments in the prior case due to her sole income being cut off after the mandatory closures of Indian casinos. Debtor is a member of an Indian tribe and her income was reduced from \$210,819.00 in 2019 to only \$70,372.00 in 2020. This required her to use all of her resources simply for living expenses in early- and mid-2021. Additionally, the Debtor was hospitalized for more one week in March of 2021 and required in-home health care following her release. Separately, Debtor's son has serious medical issues that require travel to medical appointments and payment of medical expenses not covered by insurance.

The Debtor's income, which is a "per capita" share of certain Indian gaming revenue, has returned to its pre-COVID levels. The Debtor's financial circumstances have improved and the Debtor will now be able to make the payments required to pay all creditors, both secured and unsecured, in full. Debtor asserts that her present case is filed in good faith to deal with her delinquent home loan and two vehicle loans.

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 conditionally granted and the automatic stay will be 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.

3. [21-20233](#)-B-13 EDISON REY PILAR
[KLG](#)-3 Arete Kostopoulos

MOTION TO CONFIRM PLAN
8-23-21 [[44](#)]

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 the notice required by Local Bankruptcy Rule 9014-1(f)(1). Responses were filed by U.S. Bank Trust National Association, the Chapter 13 Trustee, and Debtor. 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 sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 477 Debra Lee Court, Tracy, California ("Property").

Proposed purchaser Rachele G. Inouye has agreed to purchase the Property for \$590,000.00. Debtor states that the purchase price is sufficient to pay off the mortgage and unsecured creditors at 100%. When the Debtor filed her plan in December 2017, the proof of claim on the real property mortgage was \$125,043.76 with \$11,395.66 in pre-petition arrears. Since then, the Debtor has paid \$53,672.52 in on-going mortgage payments and \$11,395.66 in mortgage arrears.

Secured creditor U.S. Bank Trust National Association filed a conditional non-opposition to the motion to sell. Creditor consents to the sale of the property provided that its claim is paid in full pursuant to a payoff quote provided by the creditor or creditor otherwise agrees in writing.

The Chapter 13 Trustee filed an opposition stating that no estimated closing statement has been attached to the motion and that it requests its standard language in the order should the court grant the motion.

Debtor filed a response to the Trustee reiterating the sales price and stating there are sufficient proceeds to cover the estimated plan payoff amount of \$42,000. Debtor further states that she will endeavor to obtain an estimated closing statement and will include in the order granting the Trustee's requested standard language.

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

Debtor's attorney shall submit an estimated closing statement and order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

5. [20-25153](#)-B-13 MICHAEL/JOLENE YATES
[CLH](#)-4 Charles L. Hastings

CONTINUED MOTION TO CONFIRM
PLAN
7-6-21 [[88](#)]

Final Ruling

The motion is continued to November 2, 2021, at 1:00 p.m. per the order on joint request to continue hearing, dkt. 122.

The court will issue an order.

6. [18-25857](#)-B-13 MARVIN/MARY JONES
[JCK](#)-4 Kathleen H. Crist

MOTION TO MODIFY PLAN
8-31-21 [[45](#)]

Final Ruling

The Chapter 13 Trustee filed a notice of dismissal of its objection after receiving the Debtors' response that resolves issues raised by the Trustee. The Trustee's objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

There being no other objection to confirmation, the plan filed August 31, 2021, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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 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.

8. [21-22565](#)-B-13 MICHAEL/TANIKA ZUNIGA
[RDG](#)-1 Michael K. Moore

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-7-21 [[18](#)]

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

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

First, the plan is not feasible because it does not pay Class 2(A) Valley First Credit Union in equal monthly payments as provided in Section 3.08. The creditor's claim is in the amount of \$16,400.00 and the minimum monthly dividend should be approximately \$308.00 to pay the claim in full within the 60-month plan.

Second, Debtors' Form 122C-1 is based on a household size of five, their 2020 income tax returns indicate a household of three, and Schedules I and J are based on a household of four. Absent further information from the Debtors, it cannot be determined whether the plan has been proposed in good faith. 11 U.S.C. §1325(a)(3).

The plan filed July 14, 2021, 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.

9. [21-22595](#)-B-13 IBRAR KHAN
[JHK](#)-1 Gabriel E. Liberman
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY SANTANDER CONSUMER USA
INC.
8-9-21 [[14](#)]

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan for reasons stated at Item #10, RDG-1.

The plan filed July 16, 2021, 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.

10. [21-22595](#)-B-13 IBRAR KHAN
[RDG](#)-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-8-21 [[27](#)]

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

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

First, Paragraph 2.01 of Debtor's plan provides for a monthly plan payment of \$2,390.00. The Debtor has failed to provide admissible evidence that their plan is mathematically feasible. Debtor's plan payment will need to be at least \$2,530.00 in order for the plan to be feasible as proposed paying unsecured creditors 100%.

Second, the plan is not feasible because it does not pay Class 2(A) Lobel Financial Corporation in equal monthly payments as provided in Section 3.08. The plan provides for creditor's claim in the amount of \$2,729.00, the creditor filed proof of claim 2-1 with a secured amount of \$3,117.74, and the minimum monthly dividend should be at least \$59.55 to pay the claim in full within the 60-month plan.

Third, the plan is not feasible because it does not pay Class 2 San Joaquin County Tax

Collector in equal monthly payments as provided in Section 3.08. The plan provides for creditor's claim in the amount of \$1,933.80, the creditor filed proof of claim 3-1 with a secured amount of \$10,226.73, and the minimum monthly dividend should be at least \$259.69 to pay the claim in full within the 60-month plan.

Fourth, the plan fails to provide the claim of Santander Consumer USA, which filed a secured claim in the amount of \$19,288.45.

Fifth, Debtor's ability to make the plan payment of \$2,390.00 for 60 months is contingent upon a monthly contribution of \$2,250.00 as listed on Debtor's Schedule I. Debtor admitted at his meeting of creditors that the family contribution is from his brother-in-law. Debtor has failed to provide the Chapter 13 Trustee with a declaration from his brother-in-law stating the ability and willingness to financially assist Debtor.

Sixth, Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtor's plan must pay 100% (\$16,855.19 divided by \$11,546.88) to general unsecured creditors, plus interest at the Federal Judgment Rate of 0.08% since the value of the non-exempt assets exceeds the amount of the general unsecured claims.

The plan filed July 16, 2021, 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.

11. [21-22595](#)-B-13 IBRAR KHAN
[SSA-1](#)

OBJECTION TO CONFIRMATION OF
PLAN BY STOCKTON MORTGAGE REAL
ESTATE LOAN SERVICING
CORPORATION
9-3-21 [[21](#)]

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan for reasons stated at Item #10, RDG, and as supplemented below.

Debtor's plan incorrectly classifies Stockton Mortgage Real Estate Loan Servicing as a Class 1 claim, which is reserved for claims that mature after the completion of the plan. Creditor's claim matures during the life of Debtor's 60-month plan due to the Debtor and his non-filing spouse having defaulted on the monthly-interest-only payments and tax obligations, which triggered a default under the note culminating in the accelerated balance due.

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

The court will issue an order.

12. [13-21346](#)-B-13 AUKEA/VANESSA LOQUE
[MS-1](#) Mark Shmorgon

CONTINUED MOTION TO AVOID LIEN
OF PORTFOLIO RECOVERY
ASSOCIATES, LLC
9-1-21 [[70](#)]

Final Ruling

This matter was continued from September 28, 2021, to allow any party in interest to file a response by 5:00 p.m. on October 1, 2021. No response was filed. Therefore, the court's ruling conditionally granting the motion to avoid lien of Portfolio Recovery Associates, LLC at dkt. 79 shall become the court's final decision. The continued hearing on October 5, 2021, is vacated.

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

The court will issue an order.