

**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 8, 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

October 8, 2024 at 1:00 p.m.

-
- | | | | |
|----|--------------------------------|--------------------|-------------------------------|
| 1. | 24-23203 -B-13 | MICHAEL WILWERDING | OBJECTION TO CONFIRMATION OF |
| | EAT -1 | Mikalah Liviakis | PLAN BY CREDITOR CARRINGTON |
| | | | MORTGAGE SERVICES, LLC |
| | | | 9-6-24 [18] |

Final Ruling

Carrington Mortgage Services, LLC having filed a notice of withdrawal of its objection, the objection 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.¹

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

¹An order confirming the plan filed on July 23, 2024, was entered on October 2, 2024. This would also render the objection to confirmation as moot.

October 8, 2024 at 1:00 p.m.

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2. [24-23014](#)-B-13 SENGPHET/SYPHONG CONTINUED OBJECTION TO
[LGT](#)-1 PHIMMASENE CONFIRMATION OF PLAN BY LILIAN
Matthew J. DeCaminada G. TSANG
8-29-24 [[25](#)]

Final Ruling

The *initial* Chapter 13 Plan filed July 10, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to October 15, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtors have failed to provide their 2023 federal and state tax returns, Class 1 Checklist, or mortgage statement.

Second, Paragraph 2.01 of Debtors' plan provides for a monthly plan payment of \$2,060.00 for 60 months. Debtors have failed to provide admissible evidence that their plan is mathematically feasible. The Chapter 13 Trustee's calculations indicate that Debtors' plan payment will need to be at least \$2,095.20 in order for the plan to be feasible. As such, the plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

The plan filed July 10, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on October 11, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 15, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on October 15, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to October 15, 2024 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

3. [24-23214](#)-B-13 TONY/TERESA SOUZA
[JCW](#)-1 Michael Benavides
Thru #4

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
9-11-24 [[32](#)]

Final Ruling

The *initial* Chapter 13 Plan filed August 6, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to October 15, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Objecting creditor JPMorgan Chase Bank, National Association holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$1,860.04 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed August 6, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on October 11, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 15, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on October 15, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to October 15, 2024 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

4. [24-23214](#)-B-13 TONY/TERESA SOUZA
[LGT](#)-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
9-10-24 [[29](#)]

Final Ruling

The *initial* Chapter 13 Plan filed August 6, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to October 15, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtors' plan provides for attorney's fees in the amount of \$6,500.00 to be paid a monthly dividend of \$0.00. Pursuant to Local Bankruptcy Rule 2016-1(c)(4)(B), the payment flat fees must be paid in equal monthly installments over the term of the plan. Debtors' plan is a 60-month plan. The Chapter 13 Trustee estimates a monthly dividend of \$108.33 is necessary to pay the claim in full within Debtors' 60-month plan term. Because the plan pays \$0.00 per month in attorney's fees, it is not feasible.

The plan filed August 6, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on October 11, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 15, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on October 15, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to October 15, 2024 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

5. [24-23828](#)-B-13 MELINDA HOFER
[SKI](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-4-24 [[13](#)]

DEBTOR DISMISSED 09/24/24
AUTOMOTIVE CREDIT
CORPORATION VS.

Final Ruling

The case having been dismissed on September 24, 2024, the motion for relief from stay pursuant to 11 U.S.C. § 362(d)(1) is denied as moot.

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

The court will issue an order.

6. [24-23238](#)-B-13 KIMBERLY TRUJILLO OBJECTION TO CONFIRMATION OF
[AP-1](#) Arete Kostopoulos PLAN BY NATIONSTAR MORTGAGE LLC
Thru #7 9-11-24 [[30](#)]

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 Nationstar Mortgage LLC's objection, the Debtor filed a second amended plan on September 18, 2024. The confirmation hearing for the second amended plan must still be set. The earlier plan filed September 6, 2024, is not confirmed.

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

The court will issue an order.

7. [24-23238](#)-B-13 KIMBERLY TRUJILLO OBJECTION TO CONFIRMATION OF
[LGT-1](#) Arete Kostopoulos PLAN BY LILIAN G. TSANG
9-9-24 [[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). 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 Chapter 13 Trustee's objection, the Debtor filed a second amended plan on September 18, 2024. The confirmation hearing for the second amended plan must still be set. The earlier plan filed September 6, 2024, is not confirmed.

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

The court will issue an order.

8. [24-23139](#)-B-13 FRANK CANO AND ELIZABETH OBJECTION TO CONFIRMATION OF
 [LGT](#)-1 RAPISURA PLAN BY LILIAN G. TSANG
 Peter G. Macaluso 9-9-24 [[17](#)]

CONTINUED TO 10/22/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/16/24.

Final Ruling

No appearance at the October 8, 2024, hearing is required. 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). Parties in interest were not required to file a written response or opposition.

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 **conditionally grant the motion to sell and motion to incur debt, and continue the matter to October 15, 2024, at 1:00 p.m.**

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. Debtors propose to sell property described as 949 Brenda Lee Drive, Manteca, California ("Brenda Property"). The proposed purchasers Anna Semedo and Alvaro Semedo have agreed to purchase the Property for \$770,000.00. The proceeds from the sale will be sufficient to pay off Lakeview Loan's mortgage in full and provide Debtors with funds totaling \$340,600.00 as down payment on the subsequent planned purchase of real property at 654 Kibbie Court, Manteca, California ("Kibbie Property").

The total sale price of the Kibbie Property is \$940,000.00 with a down payment of \$350,000.00. The balance of the purchase is being funded by a \$590,000.00 mortgage that Debtors qualify for, and are thus incurring debt.

The Debtors completed their Chapter 13 plan on March 8, 2024, paying a total of \$62,424. They are now only waiting for a formal discharge.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion to sell is conditionally granted

Separately, a motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion to incur debt is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, October 11, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 15, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on October 15, 2024, at 1:00 p.m.

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

The court will issue an order.

10. [24-23051](#)-B-13 JOHN KEIFER
[JCW](#)-2 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CITIBANK, N.A.
8-28-24 [[23](#)]

CONTINUED TO 11/05/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/31/24.

Final Ruling

No appearance at the October 8, 2024, hearing is required. The court will issue an
order.

11. [24-22762](#)-B-13 JESSICA GONZALEZ
[GB-1](#) Pro Se
Thru #12

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK NATIONAL ASSOCIATION
8-9-24 [[19](#)]

Final Ruling

The case having been dismissed on September 26, 2024, the objection to confirmation U.S. Bank National Association is overruled as moot.

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

The court will issue an order.

12. [24-22762](#)-B-13 JESSICA GONZALEZ
[LGT-1](#) Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
8-9-24 [[22](#)]

Final Ruling

The case having been dismissed on September 26, 2024, the objection to confirmation by the Chapter 13 Trustee is overruled as moot.

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

The court will issue an order.

13. [24-23164](#)-B-13 ESTELLE YANCEY OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Pro Se PLAN BY LILIAN G. TSANG
Thru #14 9-10-24 [[19](#)]

CONTINUED TO 10/22/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/16/24.

Final Ruling

No appearance at the October 8, 2024, hearing is required. The court will issue an
order.

14. [24-23164](#)-B-13 ESTELLE YANCEY OBJECTION TO CONFIRMATION OF
[RAS](#)-1 Pro Se PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
9-11-24 [[22](#)]

CONTINUED TO 10/22/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 10/16/24.

Final Ruling

No appearance at the October 8, 2024, hearing is required. The court will issue an
order.

15. [24-23270](#)-B-13 CHRISTINE SWAN
[LGT](#)-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
9-11-24 [[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 Chapter 13 Trustee's objection, the Debtor filed an amended plan on September 23, 2024. The confirmation hearing for the amended plan is scheduled for November 12, 2024. The earlier plan filed July 26, 2024, is not confirmed.

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

The court will issue an order.

Tentative Ruling

******* MOTION TO BE HEARD AT 11:00 A.M. *******

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.

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

Debtors seek to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on July 12, 2024, for delinquency in plan payments (case no. 23-22813, dkt. 65). 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).

Debtors assert that they fell behind on plan payments in the previous case because their landlord gave them notice that they had to move, which resulted in unanticipated moving expenses. Additionally, Joint Debtor had to quit her job due to employment issues. Since the prior case was dismissed, Debtors' circumstances have changed because Joint Debtor has gained new employment and Debtors are now in a better financial position to make their plan payments.

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.

17. [24-22684](#)-B-13 ANDREW GILTON
[RDW](#)-1 Steven A. Alpert

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
9-9-24 [[19](#)]

FERRARI FINANCIAL SERVICES
VS.

Final Ruling

This matter was continued from October 1, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, October 4, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 31, granting the motion for relief from automatic stay, shall become the court's final decision. The continued hearing on October 8, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.