

**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: November 7, 2023**

**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

November 7, 2023 at 1:00 p.m.

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1. [23-22700](#)-B-13 MANUEL GALVAN OBJECTION TO CONFIRMATION OF  
[CAS](#)-1 James L. Keenan PLAN BY CAPITAL ONE AUTO  
FINANCE  
9-14-23 [[17](#)]

**Final Ruling**

The *initial* Chapter 13 Plan filed August 11, 2023, 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 November 14, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Creditor Capital One Auto Finance ("Creditor") objects to confirmation of the plan on grounds that it fails to pay the applicable prime plus interest rate and the present value of the secured claim. Creditor has filed a timely proof of claim. The Debtor has not objected to the proof of claim.

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., November 3, 2023, [http://online.wsj.com/mdc/public/page/mdc\\_bonds.html](http://online.wsj.com/mdc/public/page/mdc_bonds.html). The current prime rate is 8.50%. To set the appropriate rate, courts utilize the "formula approach" of *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), which takes into consideration the national prime rate and adjusts it for a greater risk of default posed by a debtor. Courts have typically adjusted the interest rate by 1% to 3%. The court finds that Debtor's proposed interest rate of 5% as listed in the plan is too low.

The plan filed August 11, 2023, 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), any party in interest shall have until 5:00 p.m. on November 10, 2023, 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 Debtor, the Debtor's 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 November 14, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at

November 7, 2023 at 1:00 p.m.

1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

2. [22-20120](#)-B-13 JUAN/MARIA SALAS  
[PGM](#)-4 Peter G. Macaluso

MOTION TO WITHDRAW CLAIM NUMBER  
7  
9-30-23 [[63](#)]

### **Final Ruling**

The motion to withdraw claim of Wells Fargo Auto, Claim #7, 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 withdraw Claim No. 7-1.

Debtors' counsel Peter Macaluso filed Claim No. 7-1 on behalf of Wells Fargo Auto on October 10, 2022. On August 21, 2023, Wells Fargo Auto sent counsel an email requesting that the claim be withdrawn since Wells Fargo would not have filed a proof of claim for this case.

There being no opposition to Debtors' request to withdraw the claim, the motion is granted.

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

The court will issue an order.

3. [23-22720](#)-B-13 KAREEM SYKES  
[LGT](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
10-11-23 [[35](#)]

### **Final Ruling**

The *initial* Chapter 13 Plan filed August 23, 2023, 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 November 14, 2023, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, the Debtor has failed to provide the Trustee with Business Documents including proof of rental income, 6 months of profit and loss statements, and copies of Debtor's liability riders and workers' compensation riders, if applicable, for all of Debtor's businesses. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). An attachment to Schedule I that provides for Debtor's business income and expense needs to be filed, the plan is not mathematically feasible with monthly plan payments of \$3,200.00 for 60 months rather than \$3,370.00, and additional explanation is needed as to Debtor's bank statements showing Zelle transactions to and from multiple recipients.

Third, it is unclear whether all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to secured creditors since Debtor's Form 122C-1, pay stubs, and profit and loss statements provided to the Trustee show conflicting information. 11 U.S.C. § 1325(b).

Fourth, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's Schedule I and pay advices show conflicting gross wages. The Debtor may not be able to afford the proposed plan payment. Separately, Debtor's Statement of Financial Affairs fails to accurately list income for years 2021 and 2022.

The plan filed August 23, 2023, 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), any party in interest shall have until 5:00 p.m. on November 10, 2023, 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 Debtor, the Debtor's 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 November 14, 2023, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 14, 2023, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED and CONTINUED to November 14, 2023 at 1:00 p.m. 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 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 by the Chapter 13 Trustee and creditor Paul J. Newman.

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 confirm the second amended plan.

First, the Debtors' motion to confirm fails to allege all significant factual matters under 11 U.S.C. § 1325(a)(1)-(9). The motion to confirm and declaration do not provide information that would be of use to the parties, such as a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtors to file and request confirmation of this second amended plan. The motion contains insufficient factual grounds and fails to plead with particularity.

Second, the Debtors failed to comply with Local Bankr. R. 9014-1(c)(3) because they improperly utilized docket control number GMW-4 for this motion to confirm plan when it has already been used for a motion to value collateral that was heard and denied by the court on October 10, 2023.

Third, the Debtors are \$3,900.00 delinquent in plan payments. The Debtors may not be able or willing to make the plan payments based on their current delinquency under the pending plan. 11 U.S.C. § 1325(a)(6).

Fourth, feasibility relies on the granting of motions to value collateral of One Main Financial Group, LC and Chase Bank. Those motions to value are denied at Items 5 and 6, GMW-6 and GMW-7, respectively.

Fifth, the plan is not mathematically feasible pursuant to 11 U.S.C. § 1325(a)(6). The monthly payment to secured creditors total \$3,276.08 per month, and with the current Trustee compensation and expense total \$3,619.98 per month. Debtors' plan payment is only \$1,200.00 per month in months 1 through 5. Accordingly, Debtors' Plan is not feasible.

Sixth, the Debtors' plan provides Equity Wave Lending and Zion Christian Assembly as Class 1 claims to be paid post-petition contractual payments of \$1,533.33 and \$900.00 respectively. The plan payment in months 1 through 5 is \$1,200.00 and Trustee has been unable to disburse the ongoing mortgage payments to Debtors' creditors.

Seventh, the Debtors have failed to provide Trustee with a copy of Debtors' 2022 Federal and State income tax returns. Until these are received, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. § 1325(a)(6) and 11 U.S.C. § 1325(b)(1).

Eighth, the Debtors have not provided the Trustee with requested documentation related to foster care income. Without this information, it cannot be determined whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

Ninth, the refinance or sale of Debtors' real property on or before September 1, 2024, in order to pay all claims in full is speculative. 11 U.S.C. § 1325(a)(6).

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.

5. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN MOTION TO VALUE COLLATERAL OF  
[GMW](#)-6 G. Michael Williams ONE MAIN FINANCIAL GROUP, LLC  
10-24-23 [[144](#)]

**Final Ruling**

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). However, there is no indication that One Main Financial Group, LLC was properly served. Although the Debtors utilize Official Certificate of Service Form required by Local Bankr. R. 7005-1, the Debtors failed to include Attachment 6A1 that would list the persons served, their name/capacity to receive service, and address.

Therefore, the court's decision is to deny the motion to value collateral without prejudice.

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

The court will issue an order.

6. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN MOTION TO VALUE COLLATERAL OF  
[GMW](#)-7 G. Michael Williams CHASE BANK  
10-24-23 [[149](#)]

**Final Ruling**

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). However, there is no indication that One Main Financial Group, LLC was properly served. Although the Debtors utilize Official Certificate of Service Form required by Local Bankr. R. 7005-1, the Debtors failed to include Attachment 6A1 that would list the persons served, their name/capacity to receive service, and address.

Therefore, the court's decision is to deny the motion to value collateral without prejudice.

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

The court will issue an order.

7. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN CONTINUED MOTION FOR RELIEF  
[RDW](#)-1 G. Michael Williams FROM AUTOMATIC STAY AND/OR  
MOTION FOR ADEQUATE PROTECTION  
8-22-23 [[78](#)]

PAUL J. NEWMAN VS.

**Final Ruling**

The documents filed November 3, 2023, dkts. 154-156, were not accessible on the court's docket or through PACER on and after November 3, 2023. The hearing on the motion is

continued to November 14, 2023, at 1:00 p.m. to allow the court time to obtain and review the documents.

The court will issue an order.



8. [23-21849](#)-B-13 JUAN GONZALEZ  
[ALG](#)-3 David C. Johnston

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-20-23 [[60](#)]

UNITED FIDELITY FUNDING,  
CORP. VS.

### **Tenative Ruling**

#### Introduction

Before the court is a motion for relief from the automatic stay of 11 U.S.C. § 362(a) filed by secured creditor United Fidelity Funding Corp. ("United"). United moves for relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Debtor Juan Gonzalez ("Debtor") filed an opposition. United filed a reply.

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1).

The court is satisfied that United is in good standing with the California Franchise Tax Board and therefore has standing to prosecute a motion for relief from the automatic stay. Live testimony to establish United's standing is not necessary.

**Attorneys and parties may appear either in person or telephonically for the hearing on Tuesday, November 7, 2023, at 1:00 p.m.**

The court's decision is to deny the motion as unnecessary or, if necessary, grant the motion for cause and terminate the automatic stay.

#### Background

United holds a first deed of trust on real property located at 2112 Santa Rosa Way, Stockton, California (the "Property"). The Property is the Debtor's residence. The deed of trust secures a loan the Debtor obtained from United. Debtor asserts the unpaid principal balance of the loan is slightly in excess of \$415,000.

The loan application required the Debtor to disclose all financial liabilities. When the Debtor signed the loan application, he represented that all financial information provided on the application was true, correct, and accurate. The loan documents also authorized United to rely on all financial information the Debtor provided on the application and in the loan origination process. Any misrepresentation by the Debtor in either is an event of default under the deed of trust.

Shortly after the loan funded, United sold the loan to Fannie Mae to be serviced by Mr. Cooper. In the course of performing an audit, Mr. Cooper discovered that the Debtor did not disclose an obligation which he co-signed with his son. Mr. Cooper informed United of the omission which ultimately resulted in United repurchasing the loan from Fannie Mae.

Although the Debtor minimizes and attempts to rationalize his failure to disclose the co-signed loan, the Debtor does not dispute that the co-signed loan was not disclosed on the loan application or in the loan origination process. In other words, by downplaying his failure to disclose the co-signed loan, the Debtor implicitly admits that the co-signed loan was not disclosed.

After United reacquired the loan, it declared the loan in default based on the Debtor's failure to disclose the co-signed loan. It accelerated the loan, initiated foreclosure proceedings, recorded a notice of default and election to sell, and recorded a trustee's sale notice. The sale date was apparently extended while the Debtor attempted unsuccessfully to refinance because on June 6, 2023, the Debtor filed a Chapter 13 petition to stop the foreclosure sale.

So that it could continue with its foreclosure, United requested relief from the automatic stay of 11 U.S.C. § 362(a) in an initial motion filed on August 10, 2023.

Because of questions regarding its status with the California Franchise Tax Board, and thus its standing to prosecute a motion for relief from the automatic stay, United's initial request was denied without prejudice in an order filed on September 14, 2023. The September 14, 2023, order also expressly authorized United to re-file its request to address the court's standing concerns. United availed itself of the opportunity provided in the order of September 14, 2023, and, on September 20, 2023, it re-filed its request for relief from the automatic stay.

Meanwhile, on August 16, 2023, the Debtor filed a First Amended Chapter 13 Plan. The court denied confirmation of the First Amended Plan in an order filed on October 8, 2023. The court denied confirmation on the basis that the First Amended Plan improperly classified United's secured claim. More precisely, the court determined that the Debtor's attempt to classify United's secured claim as a Class 4 claim - which are secured claims not in default when the petition is filed, which mature after completion of the plan, and on which monthly mortgage payments are paid directly by the debtor or a third party - was inconsistent with United's unobjected to proof of claim that asserted the loan was due in full prepetition and, thus, required classification of United's secured claim as a Class 2 claim to be paid in full by equal monthly payments over the term of the plan. According to the Debtor's opposition to the present motion, the Debtor intends to refile a Second Amended Plan with the same proposed treatment of United's secured claim.

### Analysis & Discussion

#### *A. The Automatic Stay has Terminated by Operation of Law.*

"Relief from stay proceedings are primarily procedural." *Harms v. Bank of New York Mellon (In re Harms)*, 603 B.R. 19, 27 (9th Cir. BAP 2019). More precisely, "[g]iven the limited nature of the relief obtained through a motion for relief from the stay," *Veal v. American Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011), the Ninth Circuit recognized nearly forty years ago that Bankruptcy Code § 362(e) "explicitly provides for expedited . . . proceedings on [requests] for relief from the automatic stay." *Farber v. 405 N. Bedford Dr. Corp. (In re 405 N. Bedford Dr. Corp.)*, 778 F.2d 1374, 1379 (9th Cir. 1985).

Bankruptcy Code § 362(e)(2) provides that, in a Chapter 13 case, the automatic stay of § 362(a) terminates by operation of law 60 days after a request to terminate it is made under § 362(d) unless one of three events happen during the 60-day period: (1) the court renders a "final decision" on the request; (2) the parties agree to an extension of the 60-day period; or (3) the court orders an extension of the 60-day.<sup>1</sup> Problematic for the Debtor here is that none of these events occurred after United first requested relief from the automatic stay on August 10, 2023. There is no agreement or court order extending the 60-day period from and after August 10, 2023. And to the extent the September 14, 2023, order denied United's August 10, 2023, motion without prejudice and with express authorization to re-file, the order of September 14, 2023, is not a "final decision" by the court. See e.g., *Harrington v. Mayer (In re Mayer)*, 28 F.4th 67 (9th Cir. 2022) (order denying request for relief from the automatic stay without prejudice is final when only when it conclusively establishes movant's entitlement to the relief requested).

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<sup>1</sup>Section 362(e)(2) states as follows:

Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless-

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended-

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

Also problematic for the Debtor is that it is the debtor's obligation to ensure that a request for relief from the automatic stay is heard before the time period in § 362(e) expires. As the Fifth Circuit stated in *River Hills Associates Ltd. v. River Hills Apartments Fund (In re River Hills Apartments Fund)*, 813 F.2d 702 (5th Cir. 1987), even when the debtor files a written opposition, it is not the court's obligation to hold a hearing during the § 362(e) statutory period; rather:

The debtor must, through 'aggressive litigation management,' obtain a timely hearing if it wants to ensure the continued protection of the automatic stay. Although the Bankruptcy Code imposes a duty upon the court to act within the appropriate time limit, *it is the debtor's burden to call the issue to the court's attention if it desires that the stay be continued.*

Id. at 707 (footnotes and citations omitted, emphasis added); *Grundy National Bank v. Harman Investments, Inc.*, 887 F.2d 1079, 1989 WL 117725, \*2 (4th Cir. Sept. 27, 1989) ("The stay lifts by operation of law when the debtor fails to seek a final hearing within the 30-day limit imposed by 11 U.S.C. § 362(e).").

Noteworthy is that Bankruptcy Rule 9006(c)(1) authorizes a debtor to request and permits the court to order - with or without motion or notice - an expedited hearing on a motion for relief from the automatic stay. See Fed. R. Bankr. P. 9006(c)(1).<sup>2</sup>

In short, nothing within the realm of § 362(e)(2) occurred to stop the 60-day clock from running or to extend it after United's initial August 10, 2023, request for relief from the automatic stay. Unabated by a final decision or an extension, the 60-day period of § 362(e)(2) continued to run from and after August 10, 2023, which means it expired on Monday, October 9, 2023, or, because that was a federal holiday, Tuesday, October 10, 2023. That also means that after October 10, 2023, the automatic stay terminated by operation of law as to United and the Property. And, of course, the court cannot terminate an already terminated automatic stay. *Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113, \*2 (9th Cir. BAP June 22, 2021).

B. *Even if the Automatic Stay has not Terminated By Operation of Law, There is Cause to Terminate it Under § 362(d)(1).*

Much of Debtor's opposition seeks to litigate the parties' underlying dispute regarding the Debtor's admitted failure to disclose the co-singed. Stay relief proceedings are not the place for litigating the merits of that dispute. In addition to expedited proceedings, stay relief proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d) and not issues arising in an underlying dispute between the parties. *Hamilton v. Hernandez (In re Hamilton)*, 2005 WL 6960211, \*3 (9th Cir. BAP Aug. 1, 2005) (citing and quoting *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)).

The cause cited as the basis for United's request under § 362(d)(1) is the Debtor's bad faith. *See In re Juarez*, 533 B.R. 818, 822 (Bankr. D. Colo. 2015) ("[W]here a court finds that a case has been filed in bad faith, such a finding would constitute cause for lifting the stay under § 362(d)(1)."). Bad faith is determined based on a consideration of a totality of the circumstances. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) (citation omitted). The totality of the circumstances includes a debtor's prepetition conduct. *550 West Ina Road Trust v. Tucker (In re Tucker)*, 989 F.2d 328, 330 (9th Cir. 1993); *see also Cook v. Cook (In re Cook)*, 74 Fed.Appx. 725, 726 n.1 (9th Cir. Aug. 6, 2003) (stating that a chapter 13 debtor's

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<sup>2</sup>Fed. R. Bankr. P. 9006(c)(1) states as follows:  
Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of the court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

prepetition conduct is relevant to the bad faith inquiry).

It is apparent to the court that the Debtor seeks to use the Chapter 13 process to excuse and ratify his intentional failure to disclose known financial information and thereby validate the loan he obtained from United through less than truthful means. Put another way, the Debtor seeks to use the Chapter 13 process to legitimize his prepetition loan misconduct. In this court's view, that is an improper use of the bankruptcy process, it is bad faith in the context of this Chapter 13 case, and it is cause under § 362(d)(1). See *In re Pinnacle Land Group, LLC*, 2018 WL 4348051, \*10 (Bankr. W.D. Pa. Sept. 10, 2018) ("Bankruptcy relief is a privilege available to those who pursue it with sincere intentions[.]").

Moreover, "[c]ause under § 362(d)(1) is not limited to a lack of adequate protection or a finding of bad faith and can exist when a debtor fails to propose a feasible plan." *In re Gundrum*, 509 B.R. 155, 163 (Bankr. S.D. Ohio 2014). Independently and alternatively, cause under § 362(d)(1) exists to grant United's motion because the Debtor has not proposed, and in the context of the present posture of this Chapter 13 case can not propose, a feasible plan.

The Debtor cannot confirm a plan that improperly classifies United's secured claim. Confirmation of the First Amended Plan was denied for this reason. Despite this, the Debtor apparently anticipates filing a Second Amended Plan that provides for the same treatment of United's secured claim. See *dk. 71* at 4:2-5. That renders the Second Amended Plan dead on arrival.

The Debtor also cannot confirm a plan that properly classifies United's secured claim, *i.e.*, classifies it as Class 2 claim based on the governing proof of claim. On a debt the Debtor states is approximately \$415,337, monthly plan payments on United's claim as a properly classified Class 2 claim would be a minimum of \$6,922 over the life of a 60-month plan. The payment necessarily increases as the plan term decreases. According to Schedule I, the Debtor's monthly income is \$6,102.

#### Conclusion

Based on the foregoing, the motion is denied as unnecessary. Alternatively, if necessary, the motion is granted. In either case, the automatic stay is terminated and United may exercise rights to the Property under applicable loan documents and applicable non-bankruptcy law.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

9. [22-20050](#)-B-13 SERENA TURCHIE  
[PGM](#)-4 Peter G. Macaluso

MOTION TO MODIFY PLAN  
9-26-23 [[85](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a supplemental ex parte motion to dismiss its opposition to the Debtor's motion to modify plan, the Trustee's opposition 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.

There being no other objection to confirmation, the plan filed September 26, 2023, will be 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.

10. [23-21845](#)-B-13 JOSEPH MOORE  
[LGT](#)-1 G. Michael Williams

CONTINUED MOTION TO DISMISS  
CASE  
10-17-23 [[42](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 46, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 7, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.

11. [23-21890](#)-B-13 ESTHER CHAVEZ  
[LGT](#)-1 James D Hornbuckle

CONTINUED MOTION TO DISMISS  
CASE  
10-17-23 [[38](#)]

**Final Ruling**

This matter was continued from October 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 42, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 7, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.