

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

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

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: December 5, 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
Modesto, California

December 5, 2023 at 1:00 p.m.

1. [18-90901](#)-B-13 GARY/COLEEN EDWARDS MOTION TO MODIFY PLAN
[TLC](#)-2 Tamie L. Cummins 10-20-23 [[154](#)]

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 Debtors have 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 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.

December 5, 2023 at 1:00 p.m.

2. [23-90513](#)-B-13 CHERYL WHIDBY
[ADR](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-3-23 [[8](#)]

JEANETTE BERRY VS.
CASE DISMISSED: 11/20/23

Final Ruling

The case having been dismissed on November 20, 2023, the motion for relief from automatic stay 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 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). The court has also determined that further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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 October 16, 2023, for failure to timely file documents (case no. 23-90443, dkt. 11). 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 her circumstances have changed because, unlike in the prior case, she has provided her attorney with all required documents necessary for the petition and her Social Security benefits are being restored, which will allow her to make plan payments.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

4. [23-90435](#)-B-13 CARLOS ELVIR ORDONEZ OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Eric J. Gravel PLAN BY LILIAN G. TSANG
11-2-23 [[16](#)]

CONTINUED TO 1/09/24 AT 1:00 P.M. AT THE MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 1/03/24.

Final Ruling

No appearance at the December 5, 2023, hearing is required. 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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, Section 7 Nonstandard Provisions of Debtors' plan provides for plan payments totaling \$57,449.00 through April 2023. However, the Chapter 13 Trustee's records indicate that Debtors have paid a total of \$57,449.00 through September 2023. Accordingly, Debtors' plan incorrectly accounts for payments already made. The Debtors' plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Second, the Debtors have failed to file amended Schedules I and/or J to update the reduction in their income in large part due to COVID-19. The Trustee has also requested copies of Debtors' most recent 6 months of pay advices.

Third, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 7.01 of the plan provides for a reduction of plan payments from \$2,354.00 to \$1,115.00 beginning October 2023. However, without amended Schedules I and/or J and pay advices, it cannot be determined whether the proposed plan is appropriate.

Fourth, Debtors' plan proposes to stop payment to the Class 2 claim of Internal Revenue Service. Debtors state in their declaration that the Internal Revenue Service is paid in full and has released its tax liens for 2014 and 2015. Until Internal Revenue Service files an amended proof of claim or the Debtors have successfully objected to the claim filed by Internal Revenue Service, Debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6).

Fifth, Debtors' plan proposes to remove the claim of Internal Revenue Service from Class 2 of the plan. This creditor has already received disbursements from the Trustee and the disbursed amounts are allowed in the amount already paid by the Trustee.

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.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **continue the matter to December 12, 2023, at 1:00 p.m.** to provide Debtors additional time to file a supplemental declaration.

The Chapter 13 trustee filed a response stating that while it does not oppose the modification requested by Debtors, additional explanation is required as to why motions were not filed with the court to have a retirement loan approved and/or a motion to approve the purchase of a vehicle. The court agrees.

Debtors' Supplemental Schedule I filed on October 31, 2023, includes a monthly deduction of \$1,243.84 for "Required repayments of retirement fund loans." This expense increased significantly from the prior amount of \$383.48 as stated in the previously filed Schedule I. Debtors provided an explanation to the Trustee's office stating that the new loan was taken out on April 30, 2022, in the amount of \$6,319.00. The funds were used to purchase a used car for Co-Debtor, who needed a reliable mode of transportation. However, the Debtors do not explain why they did not first seek court approval.

The Debtors shall have until 5:00 p.m. on Friday, December 8, 2023, to file a supplemental declaration explaining why they did not seek prior court approval before obtaining a retirement loan and purchasing a vehicle. The hearing on the motion shall be continued to December 12, 2023, at 1:00 p.m.

The court will issue an order.

8. [23-90377](#)-B-13 GUSTAVO JIMENEZ
[SKI](#)-1 Charles L. Hastings

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TD
BANK, N.A.
9-18-23 [[17](#)]

WITHDRAWN BY M.P.

Final Ruling

Creditor TD Bank, N.A. having filed a notice of withdrawal of its objection to confirmation, the objection 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 August 16, 2023, 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 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.

9. [18-90792](#)-B-13 BRIAN BERGMANN-CARLSON CONTINUED MOTION FOR RELIEF
[KMB](#)-1 AND JENNIFER CARLSON FROM AUTOMATIC STAY
6-8-23 [[55](#)]
U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling

Creditor U.S. Bank National Association having filed a voluntary withdrawal of its motion for relief from automatic stay, the motion 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.

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

10. [23-90326](#)-B-13 KRISTOPHER COOPER CONTINUED MOTION TO DISMISS
[LGT](#)-1 Flor De Maria A. Tataje CASE
11-14-23 [[78](#)]

Final Ruling

This matter was continued from November 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 1, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 91, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on December 5, 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.