

**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 17, 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
Modesto, California

December 17, 2024 at 1:00 p.m.

1. [24-90506](#)-B-13 BOBBI RODRIQUEZ MOTION TO DISMISS CASE
 [LGT](#)-1 Pro Se 11-21-24 [[24](#)]

Final Ruling

The Chapter 13 Trustee has filed a motion to withdraw its pending motion. 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 and the case will proceed in this court.

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

The court will issue an order.

December 17, 2024 at 1:00 p.m.

2. [24-90511](#)-B-13 MATTHEW MANUEL MOTION TO DISMISS CASE
 [LGT](#)-1 Flor De Maria A. Tataje 10-30-24 [[36](#)]

Final Ruling

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

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 **continue the hearing to January 7, 2025, at 1:00 p.m. and conditionally grant the motion to dismiss case.**

The Debtor has caused an unreasonable delay that is prejudicial to creditors based on Debtor's failure to file a modified plan with notice to creditors, failure to set a modified plan for hearing with notice to creditors, and is delinquent in the amount of \$680.00 as of November 1, 2024, with an additional monthly payment of \$680.00 due November 25, 2024. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

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, December 20, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 January 7, 2025, 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 January 7, 2025, at 1:00 p.m.

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 and/or any opposition has been withdrawn. 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, and creditor Hyundai Capital America d/b/a Kia Motors Finance withdrew its objection to confirmation in light of the stipulation between it and Debtor. 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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

5. [24-90234](#)-B-13 FABRICIO VASQUEZ MOTION TO DISMISS CASE
 [LGT](#)-2 David C. Johnston 11-13-24 [[59](#)]

Final Ruling

The case having been converted to one under chapter 7 on December 11, 2024, the motion to dismiss case is denied as moot.

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

The court will issue an order.

6. [24-90238](#)-B-13 RICHARD GIVARGIS
[DCJ](#)-1 David C. Johnston

MOTION TO CONFIRM PLAN
11-1-24 [[37](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

7. [24-90460](#)-B-13 CARLOS SANDOVAL MOTION TO DISMISS CASE
[LGT](#)-2 David C. Johnston 11-13-24 [[28](#)]

Final Ruling

The motion 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 convert case.

The Debtor has caused an unreasonable delay that is prejudicial to creditors based on Debtor's failure to appear and testify at the continued meeting of creditors held October 30, 2024, failure to provide copies of all payment advices or other evidence of payment received within 60 days before the date of filing of the petition, failure to provide documents as requested by the Chapter 13 Trustee, and delinquency in the amount of \$350.00 as of November 13, 2024, with an additional monthly payment of \$175.00 due November 25, 2024. 11 U.S.C. § 1307(c)(1).

A review of Debtor's schedules shows that there is non-exempt equity that may be available for the benefit of unsecured creditors. Therefore, cause exists to convert rather than dismiss this case. The motion is conditionally granted and the case will be converted.

Cause exists to convert this case. The motion is granted and the case is converted.

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

The court will issue an order.

8. [24-90568](#)-B-13 MAGALI MOLINA OBJECTION TO CONFIRMATION OF
[LGT](#)-1 Simran Singh Hundal PLAN BY LILIAN G. TSANG
Thru #9 11-20-24 [[18](#)]

Final Ruling

The *initial* Chapter 13 Plan filed September 30, 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 January 7, 2025, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

Debtor's plan is not feasible. Creditor Exeter Finance filed a proof of claim for a 2018 Nissan Sentra with a secured amount of \$10,400.00. Claim 2-1. Debtor's plan does not provide for this secured claim, and Debtor's Schedules I and J and Statement of Financial Affairs are silent as to the treatment of the creditor. Trustee is unable to tell whether Debtor intends to pay this creditor. Whether this creditor is to be paid and, if it is to be paid, how it is to be paid, which impacts whether Debtor will be able to make all payments under the plan and comply with the plan. 11 U.S.C. §1325(a)(6).

The plan filed September 30, 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), any party in interest shall have until 5:00 p.m. on December 20 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 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 January 7, 2025, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on January 7, 2025, at 1:00 p.m.

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

The court will issue an order.

9. [24-90568](#)-B-13 MAGALI MOLINA OBJECTION TO CONFIRMATION OF
[SKI](#)-1 Simran Singh Hundal PLAN BY EXETER FINANCE LLC
10-31-24 [[14](#)]

Final Ruling

The plan having been deemed not confirmable at Item #8, LGT-1, the objection to confirmation of plan by Exeter Finance LLC is overruled as moot.

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

The court will issue an order.

Tentative 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 and may appear at the hearing to offer oral argument.

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

Debtor seeks to have the automatic stay extended beyond 30 days pursuant to 11 U.S.C. § 362(c)(3). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 29, 2024, for failure to timely file documents (case no. 24-90600, 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). 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).

Debtor asserts that she failed to file documents when they came due because she was hospitalized from October 21, 2024, through October 28, 2024. Debtor states that her circumstances have changed because she has been released from the hospital, was sent home with pain medication and antibiotics, and has since returned to work. Debtor asserts that no creditors were prejudiced in the prior bankruptcy since it only lasted 18 days from the filing of the petition to dismissal. Debtor contends that the present case was filed in good faith to address a foreclosure of her home where she lives with her three dependent children.

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.