

**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: February 4, 2020**

**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

**February 4, 2020 at 1:00 p.m.**

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|----|--|---|
| 1. | <a href="#"><u>19-27407</u></a> -B-13    JAMES/TAMMERA SHINAR<br><a href="#"><u>DPC</u></a> -1                Nikki Farris | OBJECTION TO CONFIRMATION OF<br>PLAN BY DAVID P CUSICK<br>1-15-20 [ <a href="#"><u>15</u></a> ] |
|----|--|---|

**Tentative 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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on January 30, 2020. The confirmation hearing for the amended plan is scheduled for March 24, 2020. The earlier plan filed November 27, 2019, is not confirmed.

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

The court will enter a minute order.

**February 4, 2020 at 1:00 p.m.**

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2. [19-22810](#)-B-13 DENNIS/RANDI-MARIE  
[KMM](#)-1 MITCHELSON  
Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY THE MONEY SOURCE INC.  
1-6-20 [[56](#)]

### **Tentative 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.

The court's decision is to overrule the objection and confirm the plan.

Objecting creditor Money Source Inc. ("Creditor") holds a deed of trust secured by the Debtors' residence. The creditor asserts \$3,496.84 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Although Creditor also argues that the plan fails to provide how Debtors will be able to make all payments under the plan and comply with the plan pursuant to 11 U.S.C. § 1325(a)(6) given that their net income is -\$2,354.57 according to Schedule J, the Debtors filed an amended Schedule J on November 11, 2019, showing a net income of \$1,325.53.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 5, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to 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 enter a minute order.

3. [19-27810](#)-B-13 WAYNE/CLAUDIA FRANSON  
[BPC](#)-1 Mikalah R. Liviakis

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-21-20 [[17](#)]

THE GOLDEN 1 CREDIT UNION  
VS.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion for relief from stay.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Porsche Macan (the "Vehicle"). The moving party has provided the Declaration of Wes Motschman to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Motschman Declaration states that there are 2 pre-petition payments in default totaling \$1,678.52.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$42,687.12 while the value of the Vehicle is determined to be \$42,687.12 as stated in Movant's documents.

The plan filed December 18, 2019, calls for the surrender of the Vehicle in Class 3.

### **Discussion**

[The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And the Vehicle having been listed in Class 3 of the plan to be surrendered, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.  
The court will enter a minute order.

4. [19-27111](#)-B-13 MICHAEL/SHANON BENNETT OBJECTION TO CONFIRMATION OF  
[Thru #5](#) Richard Kwun PLAN BY EQUITY TRUST COMPANY  
1-16-20 [[32](#)]

CONTINUED TO 4/11/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'  
MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), NA.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a  
minute order.

5. [19-27111](#)-B-13 MICHAEL/SHANON BENNETT OBJECTION TO CONFIRMATION OF  
[DPC-1](#) Richard Kwun PLAN BY DAVID P CUSICK  
1-15-20 [[28](#)]

CONTINUED TO 4/11/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'  
MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), NA.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a  
minute order.

6. [19-27815](#)-B-13 IYANAH FLETCHER  
[RJ-2](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF  
EXETER FINANCE LLC  
1-21-20 [[28](#)]

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Exeter Finance LLC at \$4,000.00.

Debtor's motion to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Avenger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Exeter Finance LLC is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on April 25, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$24,385.94. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$4,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

### **Final Ruling**

This matter was continued from January 21, 2020, to allow Lilia Lewis ("Debtor") to file a declaration from her daughter stating her financial support to the Debtor. The stay was imposed through February 4, 2020. A declaration was filed on January 21, 2020.

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 December 19, 2019, due to delinquency in plan payments and (case no. 19-20722, dkt. 30). 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 states her bankruptcy is filed in an effort to catch up with her mortgage arrears. Debtor states that her previous bankruptcy had failed because her daughter, who contributes to the household income, had lost her job. Since the prior case was dismissed, Debtor's daughter has gained new employment and will be able to contribute financially again. Debtor's daughter filed a declaration stating that she is able and willing to contribute to the Debtor's household income to ensure that this bankruptcy succeeds.

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 ruling appended to the minutes.

The court will enter a minute order.



8. [19-27222](#)-B-13 KENNETH ENDICOTT  
[DPC](#)-1 Diana J. Cavanaugh

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
1-6-20 [[20](#)]

### **Tentative 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.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor did not appear at the first meeting of creditors held January 2, 2019. The meeting of creditors was continued to January 30, 2020. The Debtor appeared and the meeting of creditors was concluded as to Debtor.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed December 4, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to 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 enter a minute order.

9.     [19-27530](#)-B-13     DONALD/ARAINA                     OBJECTION TO CONFIRMATION OF  
          [DPC](#)-1             SCHRECKENGOST                 PLAN BY DAVID P CUSICK  
                          Kristy A. Hernandez             1-14-20 [[19](#)]

CASE DISMISSED: 1/31/2020

**Final Ruling**

The case having been dismissed on January 31, 2020, the objection is overruled as moot.  
No appearance at the February 4, 2020, hearing is necessary.

The court will enter a minute order.

10. [13-32140](#)-B-13 IOAN/FLOARE DEJEU  
[PGM-1](#) Peter G. Macaluso  
**Thru #14**

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
1-6-20 [[122](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtors' property commonly known as 15 Mua Macall Court, Sacramento, California ("Property").

A judgment was entered against Debtor individually in favor of Creditor in the amount of \$4,021.26. An abstract of judgment was recorded with Sacramento County on January 9, 2012, which encumbers the Property. OneWest Bank's first deed of trust against the Property totals approximately \$431,573.82.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$282,766.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dkt. 120.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

11. [13-32140](#)-B-13 IOAN/FLOARE DEJEU  
[PGM-2](#) Peter G. Macaluso

MOTION TO AVOID LIEN OF MIDLAND  
FUNDING, LLC  
1-6-20 [[128](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against the Debtors' property commonly known as 15 Mua Macall Court, Sacramento, California ("Property").

A judgment was entered against Joint Debtor individually in favor of Creditor in the amount of \$5,042.66. An abstract of judgment was recorded with Sacramento County on April 17, 2012, which encumbers the Property. OneWest Bank's first deed of trust against the Property totals approximately \$431,573.82 and Capital One Bank (USA), N.A.'s second position judicial lien is in the approximate amount of \$4,021.26.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$282,766.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dkt. 120.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

12. [13-32140](#)-B-13 IOAN/FLOARE DEJEU MOTION TO AVOID LIEN OF  
[PGM-3](#) Peter G. Macaluso PERSOLVE, LLC  
1-7-20 [[134](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Persolve, LLC ("Creditor") against the Debtors' property commonly known as 15 Mua Macall Court, Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$5,723.22. An abstract of judgment was recorded with Sacramento County on May 17, 2012, which encumbers the Property. OneWest Bank's first deed of trust against the Property totals approximately \$431,573.82, Capital One Bank (USA), N.A.'s second position judicial lien is in the approximate amount of \$4,021.26, and Midland Funding, LLC's third position judicial lien is in the amount of \$5,042.66.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$282,766.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dkt. 120.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

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

The court will enter a minute order.

13. [13-32140](#)-B-13 IOAN/FLOARE DEJEU MOTION TO AVOID LIEN OF GCFS,  
[PGM](#)-4 Peter G. Macaluso INC.  
1-7-20 [[140](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against the Debtors' property commonly known as 15 Mua Macall Court, Sacramento, California ("Property").

A judgment was entered against Debtor individually in favor of Creditor in the amount of \$22,751.76. An abstract of judgment was recorded with Sacramento County on February 13, 2013, which encumbers the Property. OneWest Bank's first deed of trust against the Property totals approximately \$431,573.82, Capital One Bank (USA), N.A.'s second position judicial lien is in the approximate amount of \$4,021.26, Midland Funding, LLC's third position judicial lien is in the amount of \$5,042.66, and Persolve, LLC's fourth position judicial lien is in the amount of \$5,723.22.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$282,766.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$1.00 on Schedule C. Dkt. 120.

After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

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

The court will enter a minute order.

14. [13-32140](#)-B-13 IOAN/FLOARE DEJEU  
[PGM](#)-5 Peter G. Macaluso

MOTION TO AVOID LIEN OF GCFS,  
INC.  
1-7-20 [[146](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against the Debtors' property commonly known as 15 Mua Macall Court, Sacramento, California ("Property").

A judgment was entered against Debtor individually in favor of Creditor in the amount of \$18,397.58. An abstract of judgment was recorded with Sacramento County on February 20, 2019, which encumbers the Property. OneWest Bank's first deed of trust against the Property totals approximately \$431,573.82, Capital One Bank (USA), N.A.'s second position judicial lien is in the approximate amount of \$4,021.26, Midland Funding, LLC's third position judicial lien is in the amount of \$5,042.66, Persolve, LLC's fourth position judicial lien is in the amount of \$5,723.22, and GCFS, Inc.'s fifth position judicial lien is in the amount of \$22,751.76.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$282,766.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dkt. 120.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

15. [19-27147](#)-B-13 NAVPREET GREWAL  
[DPC](#)-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
1-6-20 [[30](#)]

CASE DISMISSED: 1/31/2020

**Final Ruling**

The case having been dismissed on January 31, 2020, the objection is overruled as moot.  
No appearance at the February 4, 2020, hearing is necessary.

The court will enter a minute order.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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 November 29, 2019, due to delinquency in plan payments and failure to file an amended plan (case no. 19-23690, dkt. 42). 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 the extension is necessary to protect her home from foreclosure. Debtor's circumstances have changed because she had gone through a separation with her life partner of 23 years and was only working through temporary agency positions at the time. Since November 2019, Debtor has gained permanent employment and is confident in her ability to pay creditors.

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 ruling appended to the minutes.

The court will enter a minute order.



17. [19-26151](#)-B-13 CHAD/MARIAN VAITAI  
[MAC](#)-1 Marc A. Caraska

CONTINUED MOTION TO CONFIRM  
PLAN  
12-6-19 [[21](#)]

**No Ruling**

18. [19-26951](#)-B-13 FRANK/SYLIVIA FERNANDEZ  
[DPC](#)-1 Mark A. Wolff

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-20-19 [[26](#)]

**Tentative 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).

The court's decision is to overrule the objection and confirm the plan.

The objection to confirmation of plan was continued from January 21, 2020, in order to be heard after the continued meeting of creditors set for January 23, 2020, at which time the Debtors were required to have filed all their tax returns during the 4-year period preceding the filing of the petition. The meeting of creditors was held and concluded as to both Debtor and Joint Debtor.

Provided that the tax returns have been filed, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 21, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to 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 enter a minute order.

19. [19-27157](#)-B-13 LYNDA LLOYD OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Michael O'Dowd Hays PLAN BY DAVID P CUSICK  
1-14-20 [[20](#)]

CONTINUED TO 2/18/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 2/13/2020.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a minute order.

20. [12-38460](#)-B-13 GLEN/DENA THOMAS  
[19-2053](#) RPM-1  
THOMAS ET AL V. SUNTRUST BANK

MOTION FOR JUDGMENT ON THE  
PLEADINGS  
12-20-19 [[29](#)]

**No Ruling**

21. [19-27160](#)-B-13 DEANDRA JACKSON  
[DPC](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-7-20 [[25](#)]

CONTINUED TO 2/18/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS SET FOR 2/13/2020.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a  
minute order.

22. [19-27461](#)-B-13 RICHARD ACOSTA OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Michael O'Dowd Hays PLAN BY DAVID P. CUSICK  
1-15-20 [[25](#)]

CONTINUED TO 2/18/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 2/13/2020.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a minute order.

23. [19-27463](#)-B-13 JOAN PHILLIPS  
[CAS](#)-1 Richard L. Jare  
**Thru #25**

OBJECTION TO CONFIRMATION OF  
PLAN BY CAPITAL ONE AUTO  
FINANCE  
1-15-20 [[37](#)]

**Tentative 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.

The court's decision is to overrule the objection but the plan is nonetheless not confirmable for reasons stated at Item #24.

Objecting creditor Wilmington Savings Fund Society, FSB ("Creditor") holds a security interest in a vehicle described as a 2015 Nissan Pathfinder S Sport Utility 4D ("Vehicle"). Creditor objects to confirmation on grounds that the plan attempts to cram down the value of the Vehicle that was purchased within 910 days of the bankruptcy filing, does not provide for the appropriate prime plus interest rate, and does not provide for equal monthly payments to Creditor.

The Creditor's opposition relies on the plan's valuation of the Vehicle at \$15,800.00. The Debtor had filed a motion to value Creditor's collateral at \$15,720.00, which was rejected by the court on December 14, 2020. The Debtor subsequently filed a new motion to value at Item #25 and the court's decision will be determined at the scheduled hearing.

The plan filed December 16, 2019, 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 OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24. [19-27463](#)-B-13 JOAN PHILLIPS  
[RAS](#)-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
1-3-20 [[34](#)]

**Tentative 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.

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

Objecting creditor Wilmington Savings Fund Society, FSB holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim 3-1 in which it asserts \$10,124.17 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 payment in full of the arrearage as well as 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 December 16, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

25. [19-27463](#)-B-13 JOAN PHILLIPS MOTION TO VALUE COLLATERAL OF  
RJ-[3](#) Richard L. Jare CAPITAL ONE AUTO FINANCE  
1-21-20 [[43](#)]

**No Ruling**



26. [19-27469](#)-B-13 AARON/JESSICA MEAUX OBJECTION TO CONFIRMATION OF  
[MRG](#)-1 Peter G. Macaluso PLAN BY CONSUMER PORTFOLIO  
SERVICES  
12-18-19 [[20](#)]

CONTINUED TO 3/03/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE  
DEBTORS' MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a  
minute order.

27. [16-27270](#)-B-13 MYKOLA/ANNA YESHENKO  
[MS-1](#) Mark Shmorgon

MOTION TO MODIFY PLAN  
12-26-19 [[28](#)]

**No Ruling**

28. [19-27370](#)-B-13 MARIA WILLIAMS  
[DPC](#)-1 Eric W. Vandermey  
**Thru #29**

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-16-20 [[27](#)]

**Tentative 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.

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

First, the Debtor may not be proceeding in good faith pursuant to 11 U.S.C. §§ 1325(a)(3) and (7). This is the Debtor's fifth bankruptcy, two of which were active in the last six years. The Debtor also has not listed the gifting of a portion of the \$166,000.00, disbursed to her from the prior Chapter 7 Trustee, to her children. No gifting is listed of \$600 or more on the Statement of Financial Affairs, dkt. 1, p. 36, question 13.

Second, it is unclear whether the Debtor can afford monthly plan payments pursuant to 11 U.S.C. § 1325(a)(6). The Debtor's plan calls for monthly plan payments of \$4,300.00 but the majority of Debtor's income relies on her daughter's contribution of \$3,170.00.

Third, the Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). If the Debtor cannot explain the whereabouts of the funds disbursed by the Chapter 7 Trustee, then the Debtor's non-exempt equity totals \$166,205.07 and the Debtor has not proposed a dividend to unsecured claims in Section 3.14, Class 7 of the plan.

Fourth, feasibility relies on motions to value collateral for GM Financial. To date, the Debtor has failed to file any motion to value collateral or set it for hearing.

Fifth, the Debtor's voluntary petition does not include her middle name despite Debtor stating that she has one at the meeting of creditors.

Sixth, Schedule H, question 2, identifies that Debtor has lived in a community property state or territory but the name of her spouse, former spouse, or legal equivalent is blank.

Seventh, a plan payment of \$4,246.90 will become due by the date of the hearing on this objection to confirmation.

The plan filed November 26, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

29. [19-27370](#)-B-13 MARIA WILLIAMS  
[DWE](#)-2 Eric W. Vandermey

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
1-10-20 [[24](#)]

**Tentative 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.

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

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$65,027.94 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 payment in full of the arrearage as well as 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.

Creditor has also raised lack of good faith by the Debtor in her filing her fifth bankruptcy case pursuant to 11 U.S.C. § 1325(a)(7). This objection was also raised by the Trustee. See dkt. 27.

The plan filed November 26, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

30. [19-27371](#)-B-13 NIXON VANG  
[DPC](#)-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-14-20 [[17](#)]

**No Ruling**

31. [18-25574](#)-B-13 KAY MILLER MOTION TO MODIFY PLAN  
[MET](#)-3 Mary Ellen Terranella 12-11-19 [[68](#)]

**No Ruling**

32. [19-26879](#)-B-13 GHASSAN KAMAL  
[PGM](#)-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE  
COLLATERAL OF YOUSEF DOUMIT  
11-14-19 [[13](#)]

**No Ruling**

### **Tentative 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.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,500.00 and an additional payment of \$3,500.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor cannot make payments and comply with the plan, and the plan does not comply with applicable law. 11 U.S.C. §§ 1325(a)(1) and (6). The plan will take 52 months to complete rather than the 25 months proposed in the plan at \$3,500.00 per month. This is due to Debtor listing unsecured creditors in the amount of \$1,199.98 but, to date, unsecured claims have come in at \$21,152.26 and the claims bar date is February 5, 2020 for non-governmental entities.

Third, the claim of Advance America is misclassified in Class 1 of the plan when it should be listed in Class 2(A) since it is a secured claim that is modified by the plan or that will mature before the plan is completed. Advance America filed Claim No. 3-2 showing that a final payment of \$714.13 is due November 2, 2020, on its secured claim.

Fourth, plan payments cannot be assessed for feasibility. The Debtor's non-filing spouse's income is unclear, there is no explanation or documentation regarding the non-filing spouse's self-employment tax, and expenses related to Debtor's timeshare are inaccurate.

Fifth, the Debtor has failed to accurately fill out her bankruptcy documents pursuant to 11 U.S.C. § 521(a). Problems exist in the voluntary petition as to failing to list her middle name, and in Schedules A/B, D, H, I, J, and the Statement of Financial Affairs.

Sixth, the Debtor has claimed exemptions under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Seventh, the plan cannot be assessed for feasibility because Debtor failed to file a detailed statement showing 6-months worth of profit and loss statements, bank statements, proof of license and insurance, or a written statement that no such documentation exists as to her operation of a business.

The plan filed November 27, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.



34. [19-24685](#)-B-13 EMILIA ARDELEAN CONTINUED MOTION TO CONFIRM  
[TBG](#)-2 Daniel J. Griffin PLAN  
10-11-19 [[37](#)]

CONTINUED TO 3/24/2020 AT 1:00 P.M. PER STIPULATION.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a minute order.

35. [19-27188](#)-B-13 RAMON MIRANDA  
[DPC](#)-1 Bert M. Vega

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
1-7-20 [[22](#)]

CONTINUED TO 3/17/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS SET FOR 3/12/2020.

**Final Ruling**

No appearance at the February 4, 2020, hearing is necessary. The court will enter a  
minute order.

36. [19-27389](#)-B-13 MICHAEL/ANDREA ANGELIS OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Rabin J. Pournazarian PLAN BY DAVID P CUSICK  
1-16-20 [[13](#)]

**Tentative 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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on January 29, 2020. The confirmation hearing for the amended plan is scheduled for March 17, 2020. The earlier plan filed November 27, 2019, is not confirmed.

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

The court will enter a minute order.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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 December 20, 2019, due to delinquency in plan payments (case no. 19-24691, dkt. 42). 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 the extension is necessary to provide full payment of five vehicles, priority tax obligations, and domestic support obligations. Debtor's circumstances have changed because in the prior bankruptcy he had a loss of income due to overtime ceasing and wage garnishments for child support arrears. Debtor states his circumstances have changed because he will be working overtime in this new case and will closely work with the Sacramento County Department of Child Support Services regarding the domestic support 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 ruling appended to the minutes.

The court will enter a minute order.

38. [19-27493](#)-B-13 ROGELIO VILLAR  
[DPC](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
1-16-20 [[20](#)]

### **Tentative 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.

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

First, it is unclear whether the Debtor can afford to make plan payments pursuant to 11 U.S.C. § 1325(a)(6). Specifically, the declarations of Debtor's children, dkt. 17-19, fail to state the duration of their financial contribution to Debtor and their income source; Debtor fails to provide the income of his "significant other" on Schedule I, Statement of Affairs, or Means Test; Debtor fails to provide income information on Form 122C-1, dkt. 1, p. 38; and Debtor may be over the median family income if his household size is four rather than three.

Second, the Debtor's plan may not be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Debtor entered into a lease for a 2019 Mercedes Benz C 300 on September 29, 2019, and filed his petition on December 3, 2019. Monthly lease payments total \$724.69 per month and plan payments are proposed at \$2,860.00 for 60 months with 11.5% dividend to unsecured creditors.

The plan filed December 3, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

**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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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 ruling appended to 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 enter a minute order.