

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 9, 2021 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1.	18-27311 -C-13	KARLA ANTONETTE GAMA	CONTINUED MOTION TO MODIFY PLAN
	PSB -3	Pauldeep Bains	12-7-20 [70]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dckt. 77.

The Motion to Modify is ~~XXXXXXXX~~

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dckt. 76) filed on December 7, 2020.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition on December 10, 2020. Dkt. 78. The trustee opposes confirmation on the following grounds:

1. The debtor is \$731.00 delinquent under the proposed plan.
2. Debtor's plan fails to account for post-petition arrears of \$37,218.74 accruing due to a mortgage forbearance, and also fails to specify how the forbearance arrears will be paid at the end of the forbearance period.
3. The plan provides for the Class 2 claims of the County of Sacramento and Sunstreet Energy, but no proof of claim has been filed for either claim as is required by Section 3.01 of the plan.

DEBTOR'S REPLY

The debtor filed a Reply on January 5, 2021. Dkt. 81. The debtor asserts the following in reply:

1. The debtor submitted her payment of \$731 for November late - it posted on 12/21/2020. However, the debtor had to cancel the payment scheduled for 01/01/2021 due to unemployment not coming in as anticipated.
2. The debtor will account for the post-petition mortgage arrears through a loan modification and modified plan.
3. The County of Sacramento's claim is accounted for through Loancare's Class 1 claim.
4. Debtor's counsel filed an Amended Proof of Claim on behalf of Sunstreet Energy on December 29, 2020.

DISCUSSION

The primary question for confirmation is whether the plan is feasible. At the prior hearing, the debtor was still delinquent.

At the hearing, the parties addressed plan feasibility
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The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Karla Antonette Souza Gama, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxxxxx

2. [20-20817](#)-C-13 RONALD COLLA
[JHK](#)-2 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
12-29-20 [[73](#)]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the February 9, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dckt. 79.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Relief from the Automatic Stay is granted.

Santander Consumer USA Inc. ("Movant"), filed this Motion seeking relief from the automatic stay as to insurance proceeds stemming from the total loss of the debtor's 2018 Ford F-350 (the "Property").

Movant intends to apply the \$44,386.50 net insurance proceeds to its claim, totaling \$46,365.77.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1). Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the vehicle securing Movant's claim was totaled and only insurance proceeds remain.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, to apply insurance proceeds from the total loss of the debtor's 2018 Ford F-350 to Movant's claim.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Patricia Colla of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

3. [20-24317](#)-C-13 STACIE PRADIE
[GEL](#)-1 Gabriel Liberman

CONTINUED MOTION TO VALUE
COLLATERAL OF REAL TIME
RESOLUTIONS, INC.
9-22-20 [[10](#)]

Final Ruling: No appearance at the February 9, 2021 hearing is required.

The court issued an order (Dkt. 52) pursuant to the stipulation of the parties (Dkt. 49) resolving this Motion. No appearance at the February 9, 2021 hearing is required.

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 31.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Objection to Confirmation of Plan is ~~XXXXXX~~

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not provided a copy of her 2019 Federal and State tax returns.
2. The trustee has requested, and debtor has yet to provide, evidence substantiating her valuation of her residence and the total mortgage claim as of the filing date.
3. The debtor reports having an interest in real property located at 1460 Shirley Drive, Sacramento, California. The trustee has requested, and debtor has yet to provide, evidence substantiating her valuation of the property, debtor's interest in the property, and the total mortgage claim as of the filing date.
4. Debtor has admitted that she is owed back family support in a significant amount, which was not listed in her schedules. Debtor's plan is not proposed in good faith.

DEBTOR'S RESPONSE

After the initial hearing, the debtor filed a Response (Dkt. 53) asserting the following:

1. Debtor's counsel has provided a copy of debtor's tax returns.
2. Debtor's counsel has provided a recent mortgage statement for the 6690 Hogan Drive, Sacramento, property.
3. The debtor has provided testimony and a contractor bids in regard to the deferred maintenance estimated at \$40,000.00 in the petition.

4. Debtor's counsel has provided a recent mortgage statement for the 1460 Shirley Drive, Sacramento, property.
5. A stipulation has resolved debtor's motion to value the claim of REAL TIME RESOLUTIONS, INC. as agent for RRA CP OPPORTUNITY TRUST 1.
6. The debtor initially testified at 341 hearing that her estranged spouse may owe her for back child support, but has since confirmed that no support is owing.

DISCUSSION

The debtor appears to have addressed all of the trustee's grounds for objection.

At the hearing, **xxxxxxxxxxxxxxxx**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is **xxxxxxx**

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 96.

The Objection to Confirmation of Plan is ~~XXXXXXXXXX~~

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtors are delinquent \$1,663.00.
2. Additional administrative expenses totaling \$11,500.00 may be due from expenses of the Chapter 7 case prior to conversion. The trustee requests that if the above applications are granted by the Court, the following language be included in the order confirming the debtors' plan:

"From the \$1,100.00 of each monthly plan payment to be paid on account of administrative fees, \$61.60 shall be paid to Chapter 7 Trustee Sheri L. Carello, \$819.79 shall be paid to Desmond, Nolan, Livaich and Cunningham, Counsel for Chapter 7 Trustee Sheri L. Carello, and \$218.61 shall be paid to Debtors' attorney Scott Shumaker."

3. The trustee estimates the minimum plan payment will need to be \$1,990.00, which is greater than the proposed \$1,946.80 average plan payment.
4. Schedule I indicates gross wages of \$475.00 per month for debtor Susan Evette Hutchens. Debtor testified at her 341 Meeting of Creditors that she resigned from her job and has no income at this time.
5. The plan proposes valuing the secured claim of Hyundai Automotive Financial, but no motion to value that claim has been filed.
6. Debtors' Schedule J indicates an intent to pay student loans outside of the plan, which is unfair discrimination against other unsecured claims. While the debtors amended their schedules, the amended versions were not signed and thus the issue remains.

7. Debtors' Amended Schedule A/B at line 25 indicates a 1/3 interest in Hutchens Trust, but with an unknown value. Debtors' Schedule I lists income of \$1,350.00 from the Hutchens Trust. The trustee requests the following documentation be provided to demonstrate that the plan is feasible and meets the liquidation test:

- a. A signed and dated copy of the most recent accounting prepared by the trustee of the Hutchens Family Trust.
- b. The 2019 State and Federal Tax returns, to include all attachments and schedules, filed by the Hutchens Family Trust;
- c. The name, mailing address, telephone number and email address for the trustee administering the Hutchens Family Trust;
- d. A Statement of Distributions to Trust Beneficiaries for the calendar year 2020 prepared, signed and dated by the Hutchens Family Trust trustee;
- e. A current statement of Assets and Valuations of all assets held by the Hutchens Family Trust which is also dated and signed by the trustee

8. The Trustee requests that the debtors provide copies of all bank statements from their two Chase Bank accounts identified in their Amended Schedules A/B and identify the sources of all deposits in these bank accounts for the 2020 calendar year.

DISCUSSION

At the hearing, debtors counsel reported xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is xxxxxxxx

Final Ruling: No appearance at the February 9, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dckt. 45.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtors, Mike Edward Arroyo and Deborah Ann Arroyo, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtors' Modified Chapter 13 Plan filed on December 28, 2020 (Dckt. 44) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtors' counsel 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 trustee will submit the proposed order to the court.

7. [20-24757](#)-C-13 MERLY AGUDA
[RDG-1](#) Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-7-20 [[19](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 22.

The Objection to Confirmation of Plan is XXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan proposes valuing the secured claim of FCI Lending Servicing, Inc., but no motion has been filed to value that claim.
2. Debtor's plan provides for total priority claims in the amount of \$1,061.00. On November 25, 2020 the Internal Revenue Service filed an amended claim listing Priority Claims in the amount of \$8,618.75.
3. The Franchise Tax Board has filed a proof of claim in the secured amounts of \$4,486.71. The debtor has failed to identify this claim in the plan or on Schedule D.

DISCUSSION

A review of the docket shows the court has granted the debtor's Motion (Dkt. 23) valuing the secured claim of AG3 Revocable Trust (FCI Lending Servicing, Inc.).

At the prior hearing the parties agreed to a continuance to address the remaining grounds for opposition

At the hearing, XXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is XXXXXX

8. [20-25358](#)-C-13 OSVALDO/PATRICIA CASTRO OBJECTION TO CONFIRMATION OF
[RDG-1](#) Steele Lanphier PLAN BY RUSSELL D. GREER
1-11-21 [[17](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 20.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtors are delinquent \$625.00.
2. The plan by its terms mathematically requires a payment of \$655.06 per month. That amount is greater than the proposed payment of \$625.00.

DISCUSSION

The debtors have not demonstrated that the plan is feasible because the debtors are \$625.00. delinquent in plan payments, and because the plan mathematically requires a payment higher than the one proposed.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

9. [19-27659](#)-C-13 SHIRLEY COOPER
[PGM](#)-4 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
1-7-21 [[106](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dckt. 109.

The Motion for Allowance of Professional Fees is ~~XXXXX~~.

Peter G. Macaluso, the Attorney for Shirley Cooper, the Chapter 13 debtor, filed this Motion seeking additional fees beyond the flat fee provided for in the confirmed plan on the basis that there was substantial and unanticipated work related to Adversary Proceeding, no. 20-02013.

Fees are requested for the period February 6, 2020, through July 22, 2020. Applicant requests fees in the amount of \$12,355.00, \$1,500 of which has already been taken and applied as a credit from the debtor's settlement of the Adversary Proceeding.

TRUSTEE'S OPPOSITION

The Chapter 13 trustee filed a Response on January 26, 2021. Dkt. 111. The trustee argues:

1. No declaration of the debtor was filed agreeing to the requested fees.
2. Counsel has not explained how the representation during the adversary proceeding was unanticipated work.
3. Counsel has not explained why only \$1,500 in prevailing party fees was received from the debtor's settlement.

MOVANT'S REPLY

Debtor's counsel filed a Reply on February 2, 2021, describing the nature of the Adversary Proceeding being necessary to remedy "title theft" perpetrated against the debtor.

DISCUSSION

Debtor's counsel's response is unresponsive to the questions posed by the trustee.

No explanation was given for how representation in the Adversary Proceeding was unanticipated work. Debtor's Chapter 13 plan was confirmed,

and the flat fee of \$6,000.00 agreed to, on December 23, 2020. Dkt. 102. All of the work performed for which additional fees are requested was completed before plan confirmation. The "additional services" were not additional at all.

The situation appears to be that debtor's counsel sought two separate agreements: a flat fee for services related to the bankruptcy case, and an hourly agreement for the Adversary Proceeding. However, counsel has not identified what Local Bankruptcy Rule allows simultaneous agreements.

Debtor's counsel also did not address whether the debtor is agreeable to the charges, and why only \$1,500 in prevailing party fees were recovered if the actual fees were \$12,355.00.

At the hearing, debtor's counsel addresses the trustee's questions
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The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that xxxxxxxxxxxxxxxxxxx

10. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA CONTINUED OBJECTION TO
[PPR-1](#) MARTINEZ-MACIEL CONFIRMATION OF PLAN BY
Peter Macaluso CHAMPION MORTGAGE COMPANY
(NATIONSTAR MORTGAGE LLC, DBA)
10-9-20 [[24](#)]

Thru #11

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 29.

The Objection to Confirmation of Plan is XXXXXX

Creditor Champion Mortgage Company ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that its claim is missclassified as a Class 2, where it should be Class 1.

DEBTOR'S REPLY

The debtors filed a Reply on November 10, 2020, consenting to reclassifying Creditor's claim to Class 1 via the order confirming the plan. Dckt. 37.

DISCUSSION

The parties are in agreement that the Creditor's claim should be treated as a Class 1.

At the prior hearing the parties agreed to a continuance to resolve the grounds for Objection.

At the hearing, XXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Champion Mortgage Company, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is XXXXXXX

11. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA CONTINUED OBJECTION TO
[RDG-1](#) MARTINEZ-MACIEL CONFIRMATION OF PLAN BY RUSSELL
Peter Macaluso D. GREER
10-26-20 [[30](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 33.

The Objection to Confirmation of Plan is XXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtors' non-exempt equity totals \$68,524.63 and non-priority general unsecured claims total \$28,540.08. Accordingly, Debtors' plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of .13%

2. Debtors' plan provides for Gregory Funding as a Class 1 creditor with a postpetition mortgage payment of \$1,213.83 per month. Gregory Funding has filed a proof of claim indicating a monthly post-petition mortgage payment of \$1,468.05, meaning the debtors' plan is not feasible.

3. Debtors' plan provides for Sacramento County Tax Collector as a Class 2 claim in the amount of \$28.11 to be paid at 18% interest a monthly dividend of \$15.00. The County of Sacramento has filed a proof of claim listing a secured portion of \$1,823.32, meaning the debtors' plan is not feasible.

DISCUSSION

At the prior hearing the debtor's counsel reported he was working with Sacramento County to get them to amend their claim. A review of the docket shows the claim has yet to be amended.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is ~~xxxxxxx~~

Final Ruling: No appearance at the February 9, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 53 days' notice was provided. Dckt. 45.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Janice May Chapman, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan filed on December 18, 2020 (Dckt. 42) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel 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 trustee will submit the proposed order to the court.

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 17.

The Objection to Confirmation of Plan is XXXXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor's Schedule I at Line 5(a) indicates Tax, Medicare and Social Security deductions of \$3,122.00. This is contradictory to the information on Debtor's pay advices. The trustee requests the debtor provide a copy of debtor's January 2021 pay advices
2. Debtor's 2019 Federal and State income tax returns evidence taxes due of \$8,281.00 to the IRS and \$2,804.00 to the Franchise Tax Board. Debtor has admitted at her 341 meeting of creditors that she has recently adjusted her tax withholdings. Trustee requests that Debtor be required to file all Federal and State tax returns no later than April 15th of each year, provide copies of these returns to him not later than April 30 of each year for the duration of the plan, and modify the plan if appropriate.

DISCUSSION

The trustee opposes confirmation on the basis that the debtor's deductions on Schedule I do not match those on the debtor's pay advices. That could mean the plan is either not feasible, or that the debtor is not providing all of the debtor's disposable income into the plan. Each could be ground for denying confirmation.

Additionally, the debtor has a duty under the Bankruptcy Code to cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee's duties. 11 U.S.C. § 521(a)(3). If the debtor has not provided his January 2021 pay advice as requested by the trustee, the debtor has not met that duty.

At the hearing, XXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is **xxxxxxx**

14. [20-25380](#)-C-13 KATRINA NOPEL
[RDG-1](#) Peter Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
1-11-21 [[21](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dckt. 22.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan mathematically requires a payment of \$2,380.87, which is less than the proposed \$2,250.00 payment.
2. The plan proposes valuing the secured claims of the IRS and Ocwen Loan Servicing, LLC, but the debtor has not filed motions to value those claims.

DISCUSSION

A review of the record shows the plan is not feasible because it mathematically requires a payment higher than the one proposed, and because the plan proposes valuing the secured claims of the IRS and Ocwen Loan Servicing, LLC, but the debtor has not filed motions to value those claims.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(3) notice, with the court shortening the time period for the hearing. The Proof of Service shows that 8 days' notice was provided. Dckt. 19.

The Motion to Extend the Automatic Stay is granted.

Sidney Bernard Moore and Angela Ingrid Moore ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on October 22, 2020, after Debtor failed to confirm a plan. Order, Bankr. E.D. Cal. No. 20-21256, Dckt. 84. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtors state that the instant case was filed in good faith and explains that the previous case was dismissed after Debtor failed to provide business documents, which happened due to extreme stress associated with the Debtor's mother falling ill and passing away.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)).

Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtors have sufficiently rebutted 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 court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Sidney Bernard Moore and Angela Ingrid Moore having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.