

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 14, 2017 at 1:00 p.m.

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1. [17-20400](#)-B-13 LANELLE ROGERS MOTION TO EXTEND AUTOMATIC STAY
 SDH-1 Scott D. Hughes 1-24-17 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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. If there is opposition, the court may reconsider this tentative ruling.

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) 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 September 8, 2016, after Debtor failed to make plan payments (case no. 15-22053, dkt. 35). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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 previous case was filed to stop a trustee's sale on the Debtor's residence. Debtor states that she fell behind on plan payments after a business relationship dissolved in October 2015 that cost her \$6,000.00. Debtor asserts that this set her back going into 2016 and that she could not catch up on plan payments. The Debtor contends that her circumstances have changed because she is no longer working with the business partner, she has saved three months worth of plan payments, she has negotiated a higher commission split with her broker, and she has an escrow pending that is ready to close with a commission of about \$7,500.00. Other facts of changed circumstances that the Debtor asserts are, at this time, merely speculative.

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 court will enter an appropriate minute order.

2. [16-28201](#)-B-13 CHRISTIAN STANEK
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-25-17 [[13](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 conditionally deny the motion to dismiss.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Debtor testified at the meeting of creditors held on January 19, 2017, that the following expenses listed on Form 122C-2 do not exist: Line #15 (\$173.00); Line #21 (\$300.00); Line #25 (\$335.00) as they are being paid by his separated spouse who is not contributing to his income; and Line #41 (\$220.00). Therefore, the Debtor's monthly disposable income is \$974.95 and the Debtor must pay no less than \$58,497.00 to unsecured non-priority creditors. The proposed plan pays \$0.00 to unsecured non-priority creditors.

The plan filed December 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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. If there is opposition, the court may reconsider this tentative ruling.

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) 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, 2016, after Debtor failed to timely file the summary of assets and liabilities (case no. 16-27835, dkt. 19). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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 prior case and this case were filed in efforts to save her home and obtain a fresh start. Debtor contends that the previous case was an emergency, skeleton filing and that she timely filed all documents but inadvertently omitted the Summary of Assets and Liabilities. Debtor states that her circumstances have changed and that the present case is likely to succeed because she now receives social security in addition to her employment income and she is preparing her house to rent out to tenants to generate additional income to fund the plan.

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 court will enter an appropriate minute order.

4. [16-28209](#)-B-13 JANICE MYERS
JPJ-1 Stephen M. Reynolds
Thru #5
- OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-26-17 [[20](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 conditionally deny the motion to dismiss.

First, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition for herself and non-filing spouse. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed December 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

5. [16-28209](#)-B-13 JANICE MYERS
RCO-1 Stephen M. Reynolds
- OBJECTION TO CONFIRMATION OF
PLAN BY LAKEVIEW LOAN
SERVICING, LLC
1-12-17 [[15](#)]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 deny confirmation for reasons stated at Item #4.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$39.23 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor provides the Declaration of Cloretta Black, the declaration states only that the creditor is the holder of the first deed of trust against the property but does not provide evidence of the amount of claimed pre-petition arrears. There is no supporting evidence other than a copy of the Note and Deed of Trust filed as exhibits. Without a proof of claim or evidence to support its

assertion, the creditor's objection is overruled.

Nonetheless, the plan filed December 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the February 14, 2017, hearing is required.

This matter was heard on January 24, 2017, and continued to February 14, 2017, to allow any opposition by creditors to be filed by January 31, 2017, and any reply by the Debtor to be filed by February 7, 2017. No opposition was filed. Therefore, the defaults of the non-responding parties 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 will issue its ruling from the parties' pleadings.

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) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 14, 2016, after Debtor failed to receive a credit counseling briefing before filing her case, attend the meeting of creditors, propose a confirmable plan, provide the Trustee with her pay advices for the 60-day period prior to the filing of bankruptcy, and provide the Trustee with copies of her last filed tax return (case no. 16-25169, dkt. 50). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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 her bankruptcy cases were filed in order to cure pre-petition arrears owed on her primary residence and to retain her vehicle. The Debtor states in her declaration that she was unable to attend the meeting of creditors in her prior bankruptcy due to an emergency related to her father, who is now deceased. The Debtor believes that she will succeed in this case because she has retained legal counsel to represent her whereas in the previous case she had filed pro se.

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 court will enter an appropriate minute order.

7. [16-28129](#)-B-13 JERRY/JOANNE BENNETT
JPJ-1 Stephen N. Murphy

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-25-17 [[80](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other 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 and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on February 3, 2017. The confirmation hearing for the amended plan is scheduled for March 21, 2017. The earlier plan filed December 9, 2016, is not confirmed.

The court will enter an appropriate minute order.

8. [12-32455](#)-B-13 TERRY BARTELL
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
1-12-17 [[62](#)]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion for Additional Attorney Fees has been set for hearing on the 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)(ii) 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 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 will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$3,500.00, which was not the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 39. Applicant now seeks additional compensation in the amount of \$915.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 66.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Counsel's time is billed in irregular six-minute and quarter-hour increments and include multiple time entries billed in quarter-hour increments; however, only one *17 (N.D. Cal. 2011) (court reduced requested fees for billing in quarter-hour increments because use of such billing likely overstated the number of hours actually worked). Therefore, the court will reduce the time entry on December 8, 2016, by .25. *See Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358, *6 (S.D. Ala. 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That results in a \$75.00 reduction in the fees requested and is within the period for which fees are requested (12/8/16). Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133.

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would fall behind on plan payments and require a second plan modification. With the aforementioned adjustments, the court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$915.00
Less fees	\$ 75.00
Additional Costs and Expenses	\$ 0.00
Total	\$840.00

The court will enter an appropriate minute order.

Tentative Ruling: The Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan understates the monthly post-petition installments to Nationstar Mortgage, LLC in Class 1 at \$1,575.82. The Notice of Mortgage Payment Change filed December 20, 2016, shows that monthly payment is \$1,715.78 effective February 1, 2017. The plan will take approximately 94 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan cannot be effectively administered. The Notice of Mortgage Payment Change filed by Nationstar Mortgage, LLC on December 20, 2016, states that the reasons for the payment change is a loan modification. The Debtor's motion makes no reference to a loan modification and the court has not approved a loan modification. The Debtor has not complied with Local Bankr. R. 2013-1(j).

Third, the plan cannot be effectively administered because the plan payments as stated in the Additional Provisions are unclear. The plan proposes that the Debtor pay a total of \$14,524.00 through December 2016 and commencing January 25, 2016, the monthly payments shall be \$2,207.00. It is unclear if the Debtor intends to make this payment for January 25, 2016, in addition to the total of \$14,524.00 through December 2016, or if the Debtor intends to make monthly plan payments of \$2,207.00 beginning January 25, 2017.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

10. [16-22856](#)-B-13 AARON HUTCHINSON
WW-2 Mark A. Wolff

MOTION TO MODIFY PLAN
1-6-17 [[37](#)]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed a new modified plan on January 13, 2017. It appears that no confirmation hearing has been set for this modified plan. Nonetheless, the earlier plan filed January 6, 2017, is not confirmed.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Sell Real Property is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 sell.

The Bankruptcy Code permits the a debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 309 Roundtree Court, Sacramento, California ("Property").

The proposed purchaser of the property Rebecca Falk has agreed to purchase the Property for \$151,000.00. The purchase price will pay in full the first deed of trust and the homeowners association lien on the real property, the commission for selling and listing agents of 4.5 percent, 2016-2017 property taxes, and additional costs of sale and broker fees. The two abstract of judgments filed against the real property were avoided on February 7, 2017, by court order. The total net for the Debtor is approximately \$76,248.14. The Debtor's plan filed on October 17, 2013, and confirmed on April 11, 2014, proposes to pay 100 percent to allowed general unsecured creditors.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court will enter an appropriate minute order.

12. [15-29869](#)-B-13 MISTY HAYS
RWC-2 Rupert Corkill

MOTION TO CONFIRM PLAN
12-2-16 [[46](#)]

Tentative Ruling: The Debtor's Motion to Confirm Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the amended plan on condition that the order properly account for all payments made by the Debtor to date by stating the following: The Debtor has paid a total of \$4,120.48 to the Trustee through December 25, 2016, month 12. Commencing January 25, 2017, monthly plan payments shall be \$219.36 for the remainder of the plan.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. [16-28074](#)-B-13 EDITH INGRAM
JPJ-1 Chinonye Ugorji

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-25-17 [[22](#)]

CONTINUED TO 2/21/17 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF
CREDITORS SET FOR 2/16/17.

Final Ruling: No appearance at the February 14, 2017, hearing is required. The court
will enter an appropriate minute order.

14. [16-27285](#)-B-13 JORGE GARCIA AND MARIBEL CONTINUED MOTION TO DISMISS
JPJ-1 ALEMAN CASE
Thru #16 Thomas O. Gillis 12-30-16 [[32](#)]

Tentative Ruling: This matter was continued from January 31, 2017, to be heard in conjunction with the Debtors' motion to value collateral of Kamaljit Takhar.

The Trustee's Motion to Dismiss Case has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court's decision is to deny the motion provided that the Trustee confirms that its concerns has been satisfied.

The Trustee moves to dismiss this case on grounds that the Debtors failed to appear at the meeting of creditors held December 15, 2016, are delinquent to the Trustee in the amount of \$350.00 representing 1 plan payment, have failed to provide the Trustee with copies of their payment advices or other evidence of income received within the 60-day period prior to the filing of the petition, have failed to provide copies of their tax return for the most recent tax year a return was filed, and because feasibility depends on the granting of the motion to value collateral of Kamaljit Takhar.

The Debtors have filed a response asserting that they have resolved the Trustee's issues with regard to delinquency in plan payment, providing the Trustee with copies of payment advices, and providing copies of their tax returns.

Additionally, Debtors assert that their counsel was unable to appear at the 341 meeting due to the fact that he had eleven 341 meetings beginning at 9:00 a.m. in Fresno and that he was unable to appear at the Debtors 341 meeting and is not comfortable with special appearance attorneys in Chapter 13 341 meetings. However, Debtors provide no explanation why they, too, were not present at the 341 meeting.

With regard to the motion to value collateral of Kamaljit Takhar, that matter is denied without prejudice as stated at Item #16.

The court will enter an appropriate minute order.

15. [16-27285](#)-B-13 JORGE GARCIA AND MARIBEL CONTINUED MOTION TO CONFIRM
TOG-2 ALEMAN PLAN
Thomas O. Gillis 12-9-16 [[20](#)]

Tentative Ruling: This matter was continued from January 31, 2017, to be heard in conjunction with the Debtors' motion to value collateral of Kamaljit Takhar.

The Motion to Confirm the First Amended Chapter 13 Plan of Debtors has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court's decision is to deny based on the ruling at Item #16.

The court will enter an appropriate minute order.

16. [16-27285](#)-B-13 JORGE GARCIA AND MARIBEL MOTION TO VALUE COLLATERAL OF
TOG-3 ALEMAN KAMALJIT TAKHAR
Thomas O. Gillis 1-16-17 [[37](#)]

Tentative Ruling: The Motion to Value Collateral (Note and Second Mortgage Held by Kamaljit Takhar) 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value without prejudice.

Debtors seek to value the collateral of Kamaljit Takhar, holder of a second deed of trust against real property located at 1058 Marilyn Avenue, Yuba City, California. Takhar has filed an opposition to the Debtor's motion to value. The holder of the first deed of trust is Ocwen Loan Servicing, LLC.

It appears that the address served for entity Ocwen Loan Servicing, LLC was improper. The address of PO Box 6440, Carol Stream, Illinois 60197 is not listed on the California Secretary of State website nor the Illinois Secretary of State website. The court will not value collateral unless all lien holders on the affected property are properly noticed.

Based on the lack of proper service, the motion is denied without prejudice.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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. If there is opposition, the court may reconsider this tentative ruling.

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on June 10, 2016, upon the Debtors' voluntary motion to dismiss their case (case no. 16-22085, dkt. 60, 61, 63). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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 Debtors assert that the prior case was filed because their home was facing foreclosure. Debtors' second mortgage lender had filed for relief from stay but the Debtors were able to reach a settlement with the second mortgage lender outside of bankruptcy to refinance the loan and keep their home. Based on that settlement, the Debtors voluntarily dismissed their case. However, four months later Debtors' first mortgage lender filed a notice of default and election to sell after Debtors fell behind on mortgage payments while trying to cure the default on the second mortgage. Debtors assert that they immediately attempted negotiations with Ocwen to modify their loan but Ocwen was uncooperative and unresponsive. Debtors thereafter contacted counsel to review their bankruptcy options and decided that the best course of action was to file a new Chapter 13 case to save their house from foreclosure. Debtors contend that their circumstances have changed because they are represented by competent legal counsel and they have refinanced their second mortgage.

The Debtors have 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 court will enter an appropriate minute order.