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: March 10, 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

March 10, 2020 at 1:00 p.m.

1.	00-27002-B-13 SLP-2	ROSE PALMER Stacie L. Power	MOTION TO AVOID LIEN OF BUTTE COUNTY CREDIT BUREAU 2-5-20 [70]

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 deny the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Butte County Credit Bureau ("Creditor") against the Debtor's property commonly known as 471 ¾ East Ave, Chico, California ("Property").

Although the Debtor asserts that judgment was entered against it in favor of Creditor in the amount of $11,761.00, there is no evidence that the judgment was recorded with any county recorder and no abstract of judgment was filed as an exhibit. Debtor has filed a default judgment by the Municipal Court, North Butte County Judicial District. This is not an abstract of judgment recorded with the county recorder.

The court cannot determine whether the fixing of this judicial lien impairs the Debtor's exemption of the real property or whether its fixing is avoided pursuant to 11 U.S.C. § 522(f)(2)(A). Without an abstract of judgment to support its assertion, the Debtor has failed to meet the burden of establishing all elements of § 522(f). *See In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009). And even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief unless the Debtor has established a prima facie basis for relief under § 522(f). *In re Schneider*, 2013 WL 5979756 at *3 (Bankr. E.D.N.Y. 2013). The Debtor has not met that burden. Therefore, the Debtor's motion is denied without prejudice.

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

The court will enter a minute order.

2. 19-26402-B-13 JORGE VASQUEZ
DPC-1 Thomas A. Moore
Thru #3

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-12-20 [31]

CONTINUED TO 4/07/2020 AT 1:00 P.M. TO BE HELD AFTER CONTINUED MEETING OF CREDITORS SET FOR 3/26/2020.

Final Ruling

No appearance at the March 10, 2020, hearing is required. The court will enter a minute order.

3. 19-26402-B-13 JORGE VASQUEZ
DPC-2 Thomas A. Moore

CONTINUED MOTION TO DISMISS CASE
2-3-20 [26]

CONTINUED TO 4/07/2020 AT 1:00 P.M. TO BE HELD AFTER CONTINUED MEETING OF CREDITORS SET FOR 3/26/2020.

Final Ruling

No appearance at the March 10, 2020, hearing is required. The court will enter a minute order.

4. 19-27805-B-13 PHILLIP ROBERTS MOTION TO CONFIRM PLAN
ALF-3 Ashley R. Amerio 1-22-20 [32]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by creditors. The Chapter 13 Trustee filed a response stating that the Debtor is current on plan payments and that the plan meets all criteria for confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the 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.

5. 19-27010-B-13 MARY CARTER — MOTION TO CONFIRM PLAN
CAR-1 Yasha Rahimzadeh — 2-10-20 [26]

Final Ruling

The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 29-days' notice was provided. Therefore, the motion is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. 19-27810-B-13 WAYNE/CLAUDIA FRANSON — MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis — 2-2-20 [25]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by creditors. The Chapter 13 Trustee filed a response stating that the Debtors are current on plan payments and that the plan meets all criteria for confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

7. 19-27910-B-13 JOHN HATZIS
DPC-1 Justin K. Kuney

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
2-12-20 [24]

CONTINUED TO 3/24/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 3/19/2020.

Final Ruling

No appearance at the March 10, 2020, hearing is required. The court will enter a minute order.

8.	16-27714-B-13 RJ-1	SALVATORE/RENEE BEAZIE Richard L. Jare	MOTION TO MODIFY PLAN 1-26-20 [47]

No Ruling

9. 20-20019-B-13 LILIA LEWIS
AP-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
2-12-20 [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). 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 $52,024.75 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 January 3, 2020, 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.

10. 20-20440-B-13 NICOLE PRITCHARD
RJ-2 Richard L. Jare

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
2-23-20 [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 Travis Credit Union at $8,200.00.

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Acura TSX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,200.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *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. 6 filed by Travis Credit Union 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 May 13, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,176.16. 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 $8,200.00. *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.

11. 20-20054-B-13 **Thru #12**
DAVID/LISA EUFEMIA CARLSON
Robert P. Huckaby
OBJECTION TO CONFIRMATION OF PLAN BY TITLE HOLDING SERVICES CORP.
2-7-20 [27]

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 March 10, 2020, hearing is required. The court will enter a minute order.

12. 20-20054-B-13 DPC-1
DAVID/LISA EUFEMIA CARLSON
Robert P. Huckaby
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-19-20 [33]

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 March 10, 2020, hearing is required. The court will enter a minute order.

13. 20-20658-B-13 SJT-1 BERNARDO/RACHAEL HUBBARD Susan J. Turner — MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL 2-6-20 [8]

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 continue the matter to March 31, 2020, at 1:00 p.m.

Debtors have filed a motion to value the collateral of Ally Financial. The Chapter 13 Trustee filed a non-opposition to the motion. Debtors served Ally Financial and Ally Bank, the latter of which is an insured depository institution. An insured depository institution which means, absent exceptions not applicable here must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificate of service that corresponds with the motion reflects that Ally Bank was served as follows: "Attn: Officer, Managing or General Agent or any other agent authorized by appointment or by law to receive service of process." Dkt. 11. In other words, service on Ally Bank was not solely to an officer.

Service on Ally Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) where service was not solely to the attention of an officer of an insured depository institution. *See In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dkts. 24, 26). Other judges in this district have as well. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters where service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Petty*, No. 12-24999 (Bankr. E.D. Cal. 2012). In this case, for reasons of judicial economy and to permit the motion to be heard before the plan confirmation hearing date, the court will do the latter.

Separately, even if service on Ally Financial - and not Ally Bank - was sufficient because it is not an insured depository institution, Debtors provide no evidence as to the date the purchase-money loan was incurred. The Debtors simply make a general statement that "loan secured by the subject vehicle was made more than 910 days before this case was filed." The court cannot determine when the Vehicle was purchased and whether the loan was incurred more than 910 days prior to filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion should be denied without prejudice.

Nonetheless, it is ordered that in lieu of a denial, the hearing on the Debtors' motion

to value the collateral of Ally Bank, dkt. 8, which is currently set for March 10, 2020, at 1:00 p.m. is continued to March 31, 2020, at 1:00 p.m. The Debtors shall re-serve Ally Bank in the manner required by Bankruptcy Rule 7004(h) to the attention of an officer of the respective institution (and only to an officer of the institution) and by certified mail so that the motion may be heard consistent with Local Bankr. R. 9014-1(f)(2). Additionally, the Debtors shall provide evidence, such as in the form of exhibits, as to when the purchase-money loan was incurred.

The court will enter a minute order.

14. 19-27160-B-13 DEANDRA JACKSON
JMC-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
2-7-20 [54]

MARIA PADILLA-ANGEL VS.
DEBTOR DISMISSED: 2/17/2020

Final Ruling

The case having been dismissed on February 17, 2020, the motion is denied as moot.

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

The court will enter a minute order.

15. 16-20763-B-13 LAWRENCE/CHYANNE MICALLEF MOTION TO MODIFY PLAN
WW-6 Mark A. Wolff 1-27-20 [133]

No Ruling

16. 19-21063-B-13 ANGELA BOOTH
EJS-1 Eric John Schwab

MOTION TO MODIFY PLAN
1-29-20 [42]

No Ruling

17. 19-27971-B-13 SEAN/CRYSTAL FAY — MOTION TO CONFIRM PLAN
MJD-1 Matthew J. DeCaminada — 1-30-20 [35]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by creditors. The Chapter 13 Trustee filed a response stating that the Debtors are current on plan payments and that the plan meets all criteria for confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

18. 18-23776-B-13 HAROLD GODFREY — MOTION TO MODIFY PLAN
SLH-1 Seth L. Hanson — 1-31-20 [39]

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.

19. 20-20179-B-13 JOSE ZUNIGA
EAT-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
2-11-20 [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.

Objecting creditor Wells Fargo Bank, N.A. ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $52,989.86 in pre-petition arrearages. Creditor opposes confirmation on grounds that the plan does not provide for cure in full of Creditor's secured claim for pre-petition arrears, and delays payment of pre-petition arrears until Debtor's residence is sold. Since the value of the residence is undetermined until sold, the plan is speculative and may not be feasible due to the amount of secured claims, the costs of sale of real property, and the lack of a large equity cushion. The Ninth Circuit Bankruptcy Appellate Panel has also held that a plan proposing to withhold current mortgage payments pending sale of a debtor's residence violates § 1322(b)(2). *See In re Dunn*, 399 B.R. 909, 911 (Bankr. W.D. Wash. 2009) (discussing *Philadelphia Life Ins. Co. v. Proudfoot (In re Proudfoot)*, 144 B.R. 876 (9th Cir. BAP 1992)). This court agrees.

The plan filed January 27, 2020, 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.

20.	18-23080-B-13 PSB-1	JUANITA ROEHRIG Pauldeep Bains	MOTION TO MODIFY PLAN 1-23-20 [36]

No Ruling

21. 19-27880-B-13 JONATHAN GARCIA
DPC-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-12-20 [28]

CONTINUED TO 4/07/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 3/26/2020.

Final Ruling

No appearance at the March 10, 2020, hearing is required. The court will enter a minute order.

22. 20-20084-B-13 DPC-1 **Thru #23**

BERNADETTE TEDING
Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-19-20 [32]

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's plan seeks to impermissibly modify the debt of Deutsche Bank National Trust Company, secured solely by the Debtor's principal residence, contrary to 11 U.S.C. § 1322(b)(2). Although the plan provides for the claim, it does not propose to cure the arrearages in full based on the creditor's filed Claim No. 2-1 nor surrender the collateral. 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.

Second, the Debtor has improperly classified a Thrift Savings Plan loan and 401(k) in Class 4. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by the plan. The Debtor admitted at the meeting of creditors that at least one of the debts will be paid off prior to the end of the plan and, therefore, it is not a long term debt that would classify as a Class 4 claim.

Third, the Debtor's plan may not be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because the Debtor appears to have surplus income that is not disclosed and appears needed for the mortgage. Debtor lists required repayments of retirement fund loans on Schedule I, Line 8h, the Debtor fails to provide for a step-up payment once these loans are paid in full, which may assist the Debtor in properly paying the mortgage. Additionally, Debtor has $200.00 in additional gross income from overtime but there is an explanation on Amended Form 122C-2, Line 46, that the amount "accidently fell into the means test." If overtime occurs, the Debtor may be able to properly pay the mortgage.

Fourth, the Debtor has improperly used both exemptions California Code of Civil Procedure §§ 704 and 703. Debtor's term life policy is exempted under California Code of Civil Procedure § 704.100 but the Debtor exempts all other assets using California Code of Civil Procedure § 703.140.

The plan filed January 7, 2020, 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.

23. 20-20084-B-13 RPZ-1

BERNADETTE TEDING
Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
2-20-20 [36]

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 Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $81,953.97 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 January 7, 2020, 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.

24. 19-24685-B-13 EMILIA ARDELEAN
19-2135
MASSIOUI V. ARDELEAN
Thru #25

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-21-20 [17]

Based on the ruling at Calendar Item #25 (TBG-2, dkt. 20) the court will issue a Scheduling Order that provides for a 120-day discovery period and other corresponding dates.

25. 19-24685-B-13 EMILIA ARDELEAN
19-2135 TBG-2
MASSIOUI V. ARDELEAN

MOTION TO QUASH AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL, MOTION TO STRIKE
2-4-20 [20]

Tentative Ruling

Defendant Emilia Ardelean moves to quash service of, strike allegations in, and dismiss the amended complaint filed by plaintiff Houria El Massioui. Plaintiff filed an opposition to the motion. Defendant filed a reply.

The court has reviewed the motion, opposition, and reply. The court has also reviewed and takes judicial notice of the docket in this adversary proceeding and in the parent Chapter 13 case. For the reasons explained below, the defendant's motion will be granted in part and denied in part.

Background

Because the parties are familiar with the allegations in the amended complaint, the court makes only a general reference to the allegations here. Allegations relevant to the disposition of defendant's motion are discussed in greater detail in the context of the court's ruling below.

Plaintiff filed the complaint that commenced this adversary proceeding on November 4, 2019. On December 4, 2019, defendant filed an initial motion to quash, strike, and dismiss. The parties stipulated on December 23, 2019, to allow plaintiff to file an amended complaint. Defendant withdrew the initial motion to quash, strike, and dismiss on December 26, 2019. Plaintiff filed the amended complaint on January 21, 2020. Defendant filed a second motion to quash, strike, and dismiss on February 4, 2020.

Defendant is the debtor in the parent Chapter 13 case. Defendant owned and operated several elder care homes. Plaintiff is a creditor in the Chapter 13 case and an immigrant from Morocco with limited education and English language comprehension. Plaintiff worked as a caregiver in defendant's elder care homes between June 2015 and March 2018. Plaintiff alleges that during that time she was not paid mandated wages resulting in substantial underpayment, she was deprived of employment benefits, and she incurred unnecessary tax liabilities as a result of defendant's fraudulent and intentional conduct. Defendant has yet to answer.

Discussion

Motion to Quash

Defendant first moves to quash service of the summons and the amended complaint on the basis that service did not comply with Bankruptcy Rule 7004(b). *See* Fed. R. Civ. P. 12(b)(5); Fed. R. Bankr. P. 7012(b). Defendant asserts that service is defective because the related certificate of service states only that the summons and amended complaint were served by "mail" without reference to whether that means first class mail. Defendant also states this defect is waived if any cause of action survives.

Since all claims for relief will survive, the motion to quash will be denied.[1]

Motion to Strike

Defendant next moves to strike several paragraphs in the amended complaint. *See* Fed. R. Civ. P. 12(f); Fed. R. Bankr. P. 7012(b). More precisely, defendant moves to strike ¶ 19 on the basis it is nearly identical to ¶ 12 and therefore redundant and ¶ 23 on the basis it is immaterial and impertinent. Defendant's motion to strike will be granted in part and denied in part.

Plaintiff does not oppose striking ¶ 23. Paragraph 23 will therefore be deemed stricken.

Plaintiff opposes striking ¶ 19 on the basis it differs from ¶ 12. The court agrees. Paragraph 12 alleges oral misrepresentations whereas ¶ 19 does not. The misrepresentations alleged in ¶ 19 may therefore be read as non-verbal misrepresentations. As so read, ¶ 12 and ¶ 19 are materially different. Paragraph 19 will therefore not be stricken.

Motion to Dismiss

The § 523(a)(2) Claims in the First, Third, and Fifth Causes of Action

The First, Third, and Fifth Causes of Action allege § 523(a)(2) claims.[2] Defendant moves to dismiss the § 523(a)(2) claims on the basis they do not meet the heightened pleading requirement of Civil Rule 9(b) - applicable by Bankruptcy Rule 7009.[3] *See* Fed. R. Civ. P. 12(b)(6); Fed. R. Civ. P. 7012(b). When deciding a motion to dismiss, factual allegations are taken as true and construed liberally in plaintiff's favor. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

The § 523(a)(2) claims in the First, Third, and Fifth Causes of Action are based on false representations or misrepresentations the defendant allegedly made to the plaintiff.[4] The First Cause of Action alleges that defendant misrepresented plaintiff's employment status by telling plaintiff verbally and in writing that she was an independent contractor when in fact she was an employee. The Third Cause of action alleges that defendant made misrepresentations in plaintiff's wage statements. The Fifth Cause of Action alleges that defendant misrepresented plaintiff's employment classification and wage calculations.

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[1]And in any case, plaintiff has since filed an amended certificate of service, which states that the summons and amended complaint were served by first class mail.

[2]Defendant states that the Second Cause of Action alleges a § 523(a)(2) claim. It does not. It alleges a § 523(a)(4) claim.

[3]Civil Rule 9(b) states that"[i]n alleging fraud ... a party must state with particularity the circumstances constituting fraud[.]".

[4]The court does not read the amended complaint as an attempt by the plaintiff to recover for harm to or suffered by taxing authorities as defendant asserts with regard to the First and Fourth Causes of Action. The First Cause of Action alleges that the underlying misrepresentations were made to the plaintiff. Similarly, the Fourth Cause of Action alleges that defendant wilfully and maliciously submitted false tax information about the plaintiff to increase profits by reducing defendant's tax liabilities at plaintiff's expense. In both instances, plaintiff seeks only to recover for harm she - not the taxing authorities - allegedly suffered. The First and Fourth Causes of Action will therefore not be dismissed on the basis plaintiff seeks to recover for harm to or suffered by a third-party taxing authority.

Insofar as they are based on false representations or misrepresentations, the § 523(a)(2) claims in the First, Third, and Fifth Causes of Action are grounded in fraud or fraudulent conduct. Section 523(a)(2) claims grounded in fraud are subject to the heightened pleading requirement of Civil Rule 9(b). *See LBS Financial CU v. Cracium (In re Cracium)*, 2014 WL 2211742, *4-5 (9th Cir. BAP 2014). "To meet this standard [p]laintiff's complaint must identify the who, what, when, where, and how of the misconduct charged[.]" *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (internal quotations omitted); *see also FO-Farmer's Outlet, Inc. v. Daniell (In re Daniell)*, 2013 WL 5933657, *8 (9th Cir. BAP 2013). The court may disregard fraud allegations that do not satisfy the Civil Rule 9(b) particularity standard. *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 558 (9th Cir. 2010).

Defendant challenges the nature and timing of her alleged misrepresentations. Stated another way, defendant challenges the "what" and "when" that must be pled with particularity in order to satisfy Civil Rule 9(b).

The court initially concludes that the "what" is pled with sufficient particularity. The alleged misrepresentations clearly pertain to plaintiff's employment status and classification, wages, deductions, benefits, and tax liabilities.

Construing the amended complaint liberally and in plaintiff's favor, the court concludes that the "when" is also sufficiently pled. The "when" is identified in the amended complaint as the point in time from the beginning of plaintiff's employment and continuously through its end. That period is between June 2015 and March 2018. Stated another way, the "when" is pled as a date range.

Normally, if the "when" is pled as a date range the range of dates must be relatively narrow. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 554 (9th Cir.) (allegation that fraud occurred sometime "in May 2002" sufficiently particular), *cert. denied*, 552 U.S. 985 (2007); *Washaw v. Xoma Corp.*, 74 F.3d 955, 960 (9th Cir. 1996) (allegations that fraud occurred "between March 2 and June 4, 1992," met Rule 9(b) standard); *see also Griffin v. Green Tree Servicing, LLC*, 166 F.Supp.3d 1030, 1057 n.63 (C.D. Cal. 2015) (one-month time period sufficient to plead "when" of a fraudulent misrepresentation); *compare In re NJOY, Inc. Consumer Class Action Litig.*, 2015 WL 12732461, *13 (C.D. Cal. 2015) (nine month range not narrow and not particular under Rule 9(b)); *Hirata Corp. v. J.B. Oxford & Co.*, 193 F.R.D. 589, 598 (S.D. Ind. 2000) (six month range not narrow). However, an extended date range may satisfy the Civil Rule 9(b) particularity requirement if misrepresentations made during the range of dates are tied to other identifiable events within the period of time the date range covers. *See United States v. Hempfling*, 431 F.Supp.2d 1069 (E.D. Cal. 2006). In *Hempfling*, for example, the court found a two-year date range sufficient where the misrepresentations were tied to seminars the defendant conducted on identifiable dates. *Id.* at 1076-77. A similar analysis applies here.

Plaintiff alleges that defendant made misrepresentations over a period that is just short of three years. The alleged oral and non-verbal misrepresentations concern plaintiff's employment status and classification, wages, deductions, benefits, and taxes which, in turn, are tied directly to plaintiff's paychecks. So like *Hempfling* where discernable dates of the defendant's seminars served as the dates of defendant's misrepresentations, here too, the easily discernable dates of plaintiff's paychecks between June 2015 and March 2018 serve to sufficiently identify the "when" element of Civil Rule 9(b) as they pertain to defendant's alleged misrepresentations for purposes of the § 523(a)(2) claims. The First, Third, and Fifth Causes of Action will therefore not be dismissed.

The § 523(a)(4) Claim in the Second and Third Causes of Action

Defendant next moves to dismiss the § 523(a)(4) claims alleged in the Second and Third Causes of Action on the basis that employment does not create a fiduciary relationship. Plaintiff states that both causes of action plead larceny which does not require a fiduciary relationship. Again, the court agrees with plaintiff.

Section 523(a)(4) excepts from discharge debts for larceny. A debt can be

nondischargeable for larceny under § 523(a)(4) without the existence of a fiduciary relationship. "The phrase 'while acting in a fiduciary capacity' in § 523(a)(4) does not qualify embezzlement or larceny." *In re Lough*, 422 B.R. 727, 734 (Bankr. D. Id. 2010).

Bankruptcy courts look to the federal common law to define larceny for purposes of § 523(a)(4). *Ormsby v. First American Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). Federal common law defines larceny as a "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *Id.* (quotations omitted). A felonious taking is one that is fraudulent and wrongful. *Lucero v. Montes (In re Montes)*, 177 B.R. 325, 331 (Bankr. C.D. Cal. 1994). The amended complaint satisfies these elements.

The Second and Third Causes of Action allege that defendant committed larceny by misrepresenting the standard rate paid to a caregiver (Second Cause of Action) and through misrepresentations in plaintiff's wage statements (Third Cause of Action) in order to intentionally and fraudulently underpay plaintiff and thereby increase profits. By incorporation of the state court complaint attached to the amended complaint, defendant's misrepresentations and under-payments are alleged to be violations of California law. Again, liberally construed in plaintiff's favor, the amended complaint alleges that defendant unlawfully converted plaintiff's compensation or, in other words, defendant unlawfully deprived plaintiff of compensation otherwise due plaintiff for defendant's own benefit. The Second and Third Causes of Action will therefore not be dismissed.[5]

Conclusion

For all the foregoing reasons, defendant's motion to quash is denied with prejudice. Defendant's motion to strike is granted in part and denied in part, specifically; ¶ 23 of the amended complaint is deemed stricken and ¶ 19 of the amended complaint is not stricken. Defendant's motion to dismiss is denied. Defendant shall file and serve an answer to the amended complaint by March 24, 2020.

The court will enter a minute order.

[5]To the extent the § 523(a)(4) larceny claim involves a fraudulent intent, *see Lough*, 422 B.R. at 735, the particularity requirement of Civil Rule 9(b) is satisfied for the reasons stated above.

26. 19-27689-B-13 KEITH JOHNSON
PGM-2 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
2-11-20 [34]

Tentative 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). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Caliber Home Loans ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a trial loan modification that will require Debtor to make three payments each in the amount of $3,800.77 beginning March 1, 2020, with the last payment to be made May 1, 2020. This is a reduction from $4,151.92 in monthly post-petition payments as stated in the plan filed December 13, 2019. After all trial period payments are timely made and the Debtor continues to meet all eligibility requirement, the mortgage will be permanently modified. The modification does not affect the distribution to unsecured creditors who were originally to be paid no less than 1% in the original plan.

The motion is supported by the Declaration of Keith Johnson. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

The Chapter 13 Trustee filed a response stating that it will adjust the mortgage payment to begin making the trial payments beginning March 1, 2020, and separately notes that the Debtor is delinquent under the terms of the earlier proposed plan.

The Debtor filed a reply stating that he will file an amended plan that cures the delinquency and accounts for the trial loan modification.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will enter a minute order.

27. 20-20389-B-13 STEPHANIE WARNER
MRL-1 Mikalah R. Liviakis

MOTION FOR COMPENSATION FOR MIKALAH LIVIAKIS, DEBTORS ATTORNEY(S)
1-28-20 [9]

WITHDRAWN BY M.P.

Final Ruling

Debtor's attorney Mikalah Liviakis having filed a notice of withdrawal of its motion, the motion dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

28. 19-23295-B-13 MICHAEL GAINZA
MOH-3 Michael O'Dowd Hays

MOTION TO CONFIRM PLAN
1-23-20 [65]

No Ruling

29. 19-27996-B-13 JEFFREY MCCULLOUGH
DPC-1 Nicholas Wajda
Thru #30
WITHDRAWN BY M.P.

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-12-20 [21]

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 Debtor filed an amended plan on February 12, 2020. The confirmation hearing for the amended plan is scheduled for March 24, 2020. The earlier plan filed December 31, 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.

30. 19-27996-B-13 JEFFREY MCCULLOUGH
DWE-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
2-6-20 [17]

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 U.S. Bank National Association's objection, the Debtor filed an amended plan on February 12, 2020. The confirmation hearing for the amended plan is scheduled for March 24, 2020. The earlier plan filed December 31, 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.

31. 20-20797-B-13 NIDA LACAP — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 2-24-20 [12]

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 deny 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 January 16, 2020, since the Debtor was in default and the plan would not be completed within 60 months (case no. 18-21219, dkt. 26). 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 bankruptcy filing is necessary to save her home from foreclosure and so that she can continue to operate her business. The Debtor is a licensed administrator for the Masonic Guest Home, which she has ran for more than 15 years and has a current gross monthly income of $4,979.00. The Debtor states that since her previous case was dismissed, her circumstances have changed because she started taking younger clients than usual thinking that they will live longer.

The Debtor has not 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 Debtor's gross income has stayed the same from the prior case to the present case and there is no increase in gross income from the Debtor taking on younger clients, who will presumably reside in the Masonic Guest Home. Instead, it appears that the only change in circumstances is the change in expenses. A comparison of Schedules I and J from the prior case to the present case shows that the Debtor has reduced her expenses in order to have an increased monthly net income. Debtor's monthly net income is now $2,975.00 from the prior case of $1,450.00. The Debtor does not explain in her declaration the cause of the reduction in expenses.

The motion is denied without prejudice.

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

The court will enter a minute order.