UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 18, 2015 at 10:00 a.m.

1.	15-20407-B-13 JPJ-1	RONALD/STACI LOVELAND C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-26-15 [14]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Joint Debtor did not submit proof of her social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). As a result, the meeting of creditors was continued to March 19, 2014 to allow the Joint Debtor to provide such proof to the Trustee.

Second, the proposed duration of payment is only 3 years and the plan does not propose payment in full of the allowed unsecured claims. The applicable commitment period is 5 years. The temporal requirement of § 1325(b) applies regardless of the Debtors' projected disposable income. The Debtors will need to amend the Means Test to include the additional VA income and fill out the form in its entirety.

The Plan 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

2. 14-29108-B-13 ROSEMARIE LANDRY MOTION TO INCUR DEBT
MOH-6 Michael O'Dowd Hays 3-4-15 [68]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Incur Debt is granted.

Debtor seeks permission to purchase a new residence, the total purchase price of which is $255,000.00, with $203,500 to be paid by the Debtor with the first loan for $50,000.00 and an initial deposit of $1,500.00. The Debtor is seventy-five years old and her current residence is in escrow for a sale price of $800,000.00, out of which all filed claims will be paid in full and the balance of which will be paid to the Debtor by the title company.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

3. 14-31229-B-13 FLOYDETTE JAMES MOTION TO CONFIRM PLAN
EWV-62 Eric W. Vandermey 2-3-15 [44]

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,120.00, which represents approximately two (2) plan payments. The Debtor has not shown that the plan filed February 3, 2015 complies with 11 U.S.C. § 1325(a)(6).

The Trustee is unable to fully comply with § 2.08(b) of the plan. Due to the Debtor's failure to make timely plan payments under the terms of the previously filed plan, the Trustee lacked sufficient funds to pay the post-petition contract installments to Wells Fargo for the month of January 2015 and will not be able to disburse these funds until the March disbursements are made.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

4. 14-31130-B-13 APN-1 **Thru #6**
RICKEY/LILLIAN NELSON
Oliver Greene
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA, INC.
12-18-14 [29]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and set the matter for an evidentiary hearing.

The subject of this motion relates to a 2009 Suzuki SX4 ("Subject Property"). Rickey Nelson and Lillian Nelson ("Debtors") assert that the vehicle is valued at $3,025.00. As the owner, the 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).

However, Santander Consumer USA, Inc. ("Creditor") contends that the vehicle is valued at $7,000.00. Creditor relies on the value given in the NADA Guide (Dkt. 31, p. 4). Creditor asserts that, since the Debtors have not provided further evidence explaining the valuation discrepancy, that the Debtors have not satisfied their burden under 11 U.S.C. § 506(a)(2). The court agrees.

The Objection is sustained. Because Creditor's secured claim remains in dispute, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), and it is not confirmed.

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

5. 14-31130-B-13 CAH-2
RICKEY/LILLIAN NELSON
Oliver Greene
CONTINUED MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
12-15-14 [21]

Tentative Ruling: The Motion to Value Collateral 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 Motion to Value secured claim of Santander Consumer USA ("Creditor") will be continued and the matter shall be set for an evidentiary hearing.

The Motion filed by Rickey Nelson and Lillian Nelson ("Debtors") to value the secured claim of Creditor is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Suzuki SK4 LE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,025.00 as of the petition filing date. As the owner, the 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).

However, Santander Consumer USA, Inc. ("Creditor") contends that the vehicle is valued at $7,000.00. Creditor relies on the value given in the NADA Guide (Dkt. 31, p. 4). Creditor asserts that, since the Debtors have not provided further evidence explaining the valuation discrepancy, that the Debtors have not satisfied their burden under 11 U.S.C. § 506(a)(2). The court agrees.

6.	14-31130-B-13 JPJ-1	RICKEY/LILLIAN NELSON Oliver Greene	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-16-14 [25]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, feasibility of the plan filed November 12, 2014 depends on the granting of a motion to value collateral of Santander Consumer USA for a 2009 Chevy Impala and for a 2009 Suzuki SX4.

Second, the Debtors have not amended their petition to disclose the filing of a previous bankruptcy case as requested by the Trustee at the Meeting of Creditors. To date, the Debtors have not amended the petition and have failed to comply with 11 U.S.C. § 521(a)(3).

The Plan 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

7.	15-20232-B-13 JPJ-1 **Thru #8**	JASON NGUYEN Thomas L. Amberg	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-26-15 [34]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,454.00, which represents approximately one (1) plan payment. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried his burden of showing that the plan filed January 23, 2015 complies with 11 U.S.C. § 1325(a)(6).

The Plan 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.

8.	15-20232-B-13 PP-1	JASON NGUYEN Thomas L. Amberg	OBJECTION TO CONFIRMATION OF PLAN BY UNIVERSITY NATIONAL BANK 2-23-15 [22]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection.

First, the Debtor has not carried his burden to show that he will be able to make the plan payments under 11 U.S.C. § 1325(a)(6). Debtor's current income under Schedule I (Dkt. 11) is $3,465.00, which includes an anticipated income from employment of $1,500.00. Given that employment is merely anticipated and not certain, feasibility of the plan cannot be determined.

Second, the plan must provide for full payment of taxes. On Debtor's Schedules, the amount owing to the State of Kansas for taxes is listed as "unknown." However, a tax warrant from the Kansas Department of Revenue indicates that the amount due to it is $73,147.04 (Dkt. 25, Exh. 3, pp. 40-42).

Third, Debtor's plan does not provide for the post-petition interest and costs owed to University National Bank pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Fourth, the plan does not provide for the curing of default within a reasonable time pursuant to 11 U.S.C. § 1322(b)(5) and the proposed payments are not equal monthly amounts pursuant to 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

Fifth, Debtor's plan is not proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). Debtor failed to sufficiently disclose information relating to the rental property and the State of Kansas tax lien of $73,147.04.

The Plan 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.

9.	14-29453-B-13 JPJ-4	KAREN SCHWEITZER John G. Downing	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 3-2-15 [89]

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.

The Motion to Convert the Chapter 13 Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Karen Schweitzer ("Debtor") has been filed by Jan P. Johnson ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds.

Movant seeks dismissal of the case on the basis that Debtor is $660.00 delinquent in plan payments, which represents approximately two (2) plan payments. This is cause to convert the case to a Chapter 7 proceeding under 11 U.S.C. § 1307(c)(1) and (c)(4).

According to Schedules A through C of the petition filed October 9, 2014, the value of the non-exempt equity in the estate is $347,697.53. Conversion to a Chapter 7 proceeding is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c)

The motion is granted and the case is converted to a case under Chapter 7.

10. 14-27661-B-13 MICHAEL/JURHEE POLLARD MOTION TO INCUR DEBT
CA-3 Michael David Croddy 3-4-15 [33]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2013 Toyota Camry LE with 19,972 miles. The total purchase price is $24,947.86, with monthly payments of $587.02. The Debtors will be able to pay for this new debt by decreasing their plan expense at $366.66 per month from surrendering their old vehicle and by deceasing their food budget by $225.00 per month.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

11. 14-30363-B-13 SARITA KUMAR MOTION TO CONFIRM PLAN
AAV-2 Alla V. Vorobets 2-2-15 [47]

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Second Amended Plan is denied without prejudice.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $104.00, which represents approximately one (1) plan payment. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify a selection as to whether counsel shall seek approval fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. § 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

The treatment of secured creditor Toyota Motor Credit is unclear as it is listed in both Class 2A and 2B tables of the plan filed February 2, 2015.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

12.	10-28281-B-13 LLL-12	TRINI/ANGELA WHITTAKER Lawrence Lockwood	MOTION FOR COMPENSATION FOR LAWRENCE L. LOCKWOOD, DEBTORS' ATTORNEY 2-17-15 [331]

Tentative Ruling: The Motion for Allowance of Professional 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).

The Motion for Compensation is granted.

FEES REQUESTED

Lawrence Lockwood ("Applicant"), the attorney to Chapter 13 Debtors Trini and Engela Whittaker ("Clients"), makes a request for the allowance of his original fee balance in the amount of $1,774.00. The period for which the fees are requested is for the period July 15, 2010 through December 28, 2014. Applicant does not request additional fees.

Unlike Applicant's motion filed on January 12, 2015, Applicant now provides a task billing analysis and supporting evidence for the services provided (Dkt. 331, p. 3).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's

> estate;
>
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed, and the Trustee is authorized to pay, the $1,774.00 reflective of the following amounts as compensation to this professional in this case:

Fees	$1,774.00
Costs and Expenses	$ 0.00

13.	11-28590-B-13 CJY-4	JOE/CECILIA MODESTO James D. Pitner	MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRIEND YOUNGER, PC FOR JAMES D. PITNER, DEBTORS' ATTORNEY(S) 2-16-15 [99]

Tentative Ruling: The court issues no tentative ruling.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.

14.	13-29992-B-13 SNM-8	JUAN COLEMAN Stephen N. Murphy	MOTION TO APPROVE LOAN MODIFICATION 2-23-15 [113]

CONTINUED TO 3/23/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

15. 15-21194-B-13 JANET LYTLE MOTION TO EXTEND AUTOMATIC STAY
MAC-1 Marc A. Caraska 3-4-15 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Extend the Automatic Stay is conditionally granted.

Janet Lytle ("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 (No. 2014-28950) was dismissed on January 23, 2015, after Debtor failed to make required plan payments. Additionally, the Debtor had a prior bankruptcy case (No. 2013-24839) that was dismissed on August 8, 2014, also for failure to make plan payments. 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 filed 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 here states that the present case was filed in good faith and the dismissal of the prior cases was not due to willful inadvertence or negligence on the part of the Debtor.

The Debtor's prior cases were dismissed for failure to make plan payments. The Debtor attributes those failures to an extended freeze on account funds that resulted in her inability to access funds and the result of an error with Debtor's transactions with a third-party servicer that was to provide automatic payment to the Trustee. With respect to the most recent dismissal, the Debtor maintains that payments were to be withdrawn from Debtor's account automatically by the servicer but did not reach the Trustee in a timely manner.

Additionally, the extension of the automatic stay to the date of discharge will ensure that any creditors will not be free to engage in last minute self-help efforts before the Order Confirming Plan.

The Debtor has 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 conditionally granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court. However, the stay will terminate without further order upon the failure of the Debtor to make any payment required by the court, the Trustee, or a plan and the filing of a notice of such nonpayment by any party or entity.

16. 15-20198-B-13 JPJ-1 | TEDDIE/SHARION BROWN Julius M. Engel | OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-26-15 [18]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Debtors own several farm animals that were not listed on Schedule B. The Trustee requested that the Meeting of Creditors that the Debtors amend Schedule B. However, to this date, no such amendment has been provided. Thus, the Trustee cannot properly determine whether the plan filed January 26, 2015 complies with 11 U.S.C. § 1325(a)(4) or whether the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Second, the Debtors testified at the Meeting of Creditors that they owned and operated an animal care business up until approximately November 2014. However, no information regarding this business was disclosed on the petition. The Trustee requested that the Debtors amend the Statement of Financial Affairs, but not such amendment has been filed. Because of this, the Trustee is unable to assess feasibility of the plan or if the plan complies with 11 U.S.C. § 1325(a)(6).

Third, feasibility depends on the granting of a motion to value collateral of Santander Consumer for a 2006 Chevy Trail Blazer. To date, the Debtors have not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Fourth, feasibility depends on the granting of a motion to value collateral of Green Tree Servicing for the second deed of trust on Debtors' residence. To date, the Debtors have not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Fifth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors.

The Plan 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

17. 12-40756-B-13 PHILIP/LINDA CUMMINGS MOTION TO SELL O.S.T.
EJS-3 Eric John Schwab 3-11-15 [83]
Thru #18

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.

18. 12-40756-B-13 PHILIP/LINDA CUMMINGS MOTION TO SELL O.S.T.
EJS-2 Eric John Schwab 3-11-15 [89]

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.