UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 22, 2016, at 1:30 p.m.

1.	**12-41713-E-11** **RLC-8**	**MARVIN/ARNELLE BROWN** **Stephen Reynolds**	**MOTION FOR DISCHARGE O.S.T. 11-8-16 [199]**

APPEARANCE OF STEPHEN REYNOLDS, ATTORNEY FOR PLAN ADMINISTRATOR/DEBTOR, REQUIRED AT THE NOVEMBER 22, 2016 HEARING

NO TELEPHONIC APPEARANCE PERMITTED

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plan Administrator/Debtor, Plan Administrator's/Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2016. By the court's calculation, 12 days' notice was provided. The court required notice be served by November 10, 2016. Dckt. 198.

The Motion for Entry of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. At the hearing ----------.

The Motion for Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Marvin Brown and Arnelle Brown ("Plan Administrator/Debtor"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

The Plan Administrator's/Debtor's Declaration (Dckt. 201) certifies that the Plan Administrator/Debtor:

A. has completed the plan payments,

B. is not subject to the provisions of 11 U.S.C. § 522(q)(1), and

C. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, the Plan Administrator/Debtor is entitled to a discharge.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Discharge filed by Marvin Brown and Arnelle ("Plan Administrator/Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the court shall enter the discharge for Marvin Brown and Arnelle Brown in this case.

2. **16-24661-E-13** **RONNETTE ROGERS RUNNINGS** **MOTION FOR RELIEF FROM**
APN-1 **Dale Orthner** **AUTOMATIC STAY**
10-6-16 [37]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the November 22, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 6, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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. 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 Motion for Relief from the Automatic Stay is granted.

Ronnette Runnings ("Debtor") commenced this bankruptcy case on July 18, 2016. Santander Consumer USA Inc.("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Ford Freestyle, VIN ending in 5327 ("Vehicle"). The moving party has provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Erica Engel Declaration provides testimony that Debtor has not made payments since June 2015, and the contract reached maturity on September 15, 2016. The matured balance of the contract is $6,574.49, and Movant is in possession of the Vehicle.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The NADA Valuation Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $6,574.49, as stated in the Erica Engel Declaration. The vehicle was not listed on Schedules B and D filed by Debtor. A $5,000.00 debt owed to Movant for a vehicle was listed on Schedule F, however, and Debtor indicates that the vehicle has been repossessed already.

TRUSTEE'S NONOPPOSITION

David Cusick, Chapter 13 Trustee, filed an statement of nonopposition on November 8, 2016. Dckt. 50. Trustee asserts that Debtor is current under the confirmed plan and that Movant's secured claim is not provided for in the plan. Schedules E and F show that the creditor is owed for a "Repossessed Vehicle."

DISCUSSION

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to

another chapter of the Code. As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority),

> "request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is."

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Santander Consumer USA Inc. and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Santander Consumer USA Inc. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a per se violation of the automatic stay.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2006 Ford Freestyle ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially

sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause.

No other or additional relief is granted.

3.	**14-23271-E-13** **HLG-5** **HLG-6** **HGL-7** **CASE RE-OPENED: 11/14/2016**	**ROBERT/CINDY LANDINGHAM** **Kristy Hernandez**	**COMBINED STATUS CONFERENCE RE: PROPOSED AMENDED ORDERS TO VALUE COLLATERAL OF CACH, LLC** **6-12-14 [64]**

APPEARANCE OF KRISTY HERNANDEZ, ATTORNEY FOR THE DEBTOR, REQUIRED AT THE NOVEMBER 22, 2016 HEARING

NO TELEPHONIC APPEARANCE PERMITTED

Debtors' Atty: Kristy Hernandez

Notes: Combined status conference set by order of the court dated 11/03/16 [Dckt. 146]. Debtor to report what amendments need to be made to prior orders. Debtor filed three Motions to Avoid Judicial Lien on 11/14/16 [Dckts. 150, 155, and 160].

The Combined Status Conference are xxxxxxxxxxxxxxxxxxxx.

NOVEMBER 22, 2016 STATUS CONFERENCE

After Debtors received their discharge and this bankruptcy case was closed in September 2016, Debtors' counsel began lodging with the court "Amended Orders," purporting to amend orders made by this court in July 2014. No motions to amend were filed, and no basis was given for the repeated filing of the "Amended Orders." It appears that Debtors' counsel was seeking to change orders that valued secured claims pursuant to 11 U.S.C. § 506(a) into judgments determining the extent, validity, and priority of liens (for which an adversary proceeding is required, Fed. R. Bankr. P. 7001).

After rejecting two rounds of orders, the court issued an Order for Status Conferences in this and related orders. Order, Dckt. 146. The Order for Status Conferences was issued on November 3, 2016.

On November 14, 2016, counsel for Debtors filed three new Motions, DCNs: HLG-12, HLG-13, and HLG-14. These three motions seek to obtain orders voiding judicial liens pursuant to 11 U.S.C. § 522(f), which is not the same as a motion to value a secured claim pursuant to 11 U.S.C. § 506(a).

On November 18, 2016, counsel for Debtors filed her declaration in response to the court's Status Conference Order. Dckt. 166. The court ordered that any Status Reports (such as this declaration appears to be) be filed and served on or before November 15, 2016. Order, p. 3:21–22; Dckt. 146. In her declaration, Debtors' counsel states that after completion of the plan when Debtors went to refinance their property, the title company would not accept the court's 2014 orders based on the formatting (the soon to be discontinued "minute order" format) and not the substance of the prior orders.

Unfortunately, the "Amended Orders" uploaded to the court did not just change the formatting, but inserted new language "avoiding" the liens. This is inconsistent with Debtors' counsel's testimony under penalty of perjury in her Declaration (Dckt. 166).

In light of the significant difference between the relief that may be granted under the two different Bankruptcy Code sections, counsel's repeated, persistent, attempt to get (possibly trick) this court into entering an improper order is quite concerning.

At the hearing, counsel for Debtors advised the court, xxxxxxxxxxxxxxxxxxxxxx.

4. 16-90500-E-11 ELENA DELGADILLO
David Johnston

SUPPLEMENTAL STATUS CONFERENCE RE: VOLUNTARY PETITION
6-9-16 [1]

Debtor's Atty: David C. Johnston

Notes:
Set by order of the court dated 11/15/16 [Dckt 63]. Parties to report any renewed communications they have had following the 11/14/16 filing of the Motion for Order Shortening Time regarding the Motion to Appoint Chapter 11 Trustee, or, in the Alternative, Convert Action to Chapter 7.

The Supplemental Status Conference is xxxxxxxxxxxxxxxxxxxxxxx.

NOVEMBER 22, 2016 SUPPLEMENTAL STATUS CONFERENCE

At the Supplemental Status Conference it was reported to the court xxxxxxxxxxxxxxxxxxxxxxx.

Order for November 22, 2016 Supplemental Status Conference

Elena Delgadillo, the Chapter 11 Debtor in Possession, ("ΔIP") commenced this case on June 6, 2016. On November 14, 2016, Sacramento Lopez ("Creditor") filed a Motion for Order Shortening Time for a hearing on a Motion to appoint a Chapter 11 Trustee or convert the above-captioned bankruptcy case to one under Chapter 7. Motion, Dckt. 60. The Motion for Order Shortening Time states with particularity the grounds (Fed. R. Bankr. P. 9013) upon which the requested relief is based:

A. "Pursuant to L.B.R. 9014-1(f)(3), Creditor Sacramento Lopez hereby submits the following Application for Order Shortening Time for Hearing on Motion to Appoint a Chapter 11 Trustee, or, in the Alternative, to Convert Action to Chapter 7."

B. "Creditor requests a hearing on December 1, 2016, at 10:30 p.m, or as soon as the matter may be heard."

C. "This Application is made on the grounds that good cause exists for the hearing of this motion on shortened time."

D. "This Application is based on the Declaration of Andrew J. Ditlevsen filed and served herewith."

Motion, Dckt. 60. On its face, the "grounds" stated are only the legal conclusion that "good cause exists." The Motion then instructs the court to read another pleading and tease from it what grounds could be stated in the court's opinion.

In reading the Declaration (Dckt. 61), much of the testimony relates not to the "grounds" upon which an order shortening time is requested, but the history of the dealings between Creditor and the ΔIP. The Declaration makes reference to a Stipulation that Creditor and the ΔIP executed, which "stipulation" has not been authorized by the court.

Notwithstanding the above shortcomings, the court recognizes that Creditor and Creditor's counsel have been a positive force in this bankruptcy case, working productively with ΔIP's counsel. Without such constructive, positive efforts, this case could well descend into a legal morass.

Creditor identifies a lack of communication by the ΔIP and ΔIP's counsel, and the failure of ΔIP to meet certain benchmarks in the "stipulation." Creditor, not unexpectedly, fears the worst and that ΔIP and ΔIP's counsel have gone South on their collective efforts.

It has come to the court's attention in an unrelated case (*J&B Dairy*, Bankr. E.D. Cal. 16-90923) that ΔIP's counsel has suffered from a recent sick spell that has prevented him from working. While such an illness is not an "excuse," it provides an explanation for what appears to be a withdrawal from the former productive activities.

Creditor, bringing this to the court's attention, has prompted the court to set an immediate supplemental status conference to consider the status of the case, ΔIP's counsel's ability to continue in this

case, and a vehicle to rekindle the productive communication between the parties. The court concludes that before sending the respective parties down the contested matter gauntlet, a Supplemental Status Conference may be of assistance in keeping the parties focused on achieving their mutually advantageous goals that they have developed previously.

5. 16-26966-E-13 LBG-1 | **JENNIFER RIANDA** | **Lucas Garcia** | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY** | **11-2-16 [14]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 1, 2016. By the court's calculation, 15 days' notice was provided.

The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Motion to Extend Automatic Stay is denied.

Jennifer Rianda ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-22909) was dismissed on June 27, 2016, after Debtor defaulted on plan payments, knowingly failed to disclose assets, and proposed to fund the plan with the illegal operation of an undisclosed corporation. *See* Order, Bankr. E.D. Cal. No. 15-22909, Dckt. 83, June 27, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

NOVEMBER 16, 2016 HEARING

At the November 16, 2016 hearing, the court continued the matter to 1:30 p.m. on November 22, 2016. Dckt. 28. The court extended the automatic stay on an interim basis through 12:00 p.m. on December 1, 2016, unless terminated earlier by further order of the court. The continuance was necessitated due to a medical necessity that Debtor's counsel was required to address.

In dismissing the prior case, the court noted that Debtor has a third case that was dismissed on July 1, 2013. The court's ruling to dismiss the prior (second) case includes the following:

> "The court also notes that this is not Debtor's first bankruptcy case. She filed a Chapter 13 case (represented by the same counsel as in this case) on March 19, 2013. Bankr. E.D. Cal. 13-23661. The first bankruptcy case was dismissed on July 1, 2013, due to Debtor's failure to make any payments in that case. *Id.*; Civil Minutes, Dckt. 32.
>
> This bankruptcy case was filed on April 9, 2015. On June 1, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, asserting that Debtor was $9,500.00 delinquent in payments, having failed to make any payments in this case. Motion, Dckt. 30. The motion was denied without prejudice based on the Debtor having cured the default. Civil Minutes for June 24, 2016 hearing, Dckt. 40. On December 14, 2015, the Chapter 13 [Trustee] filed another motion to dismiss this case based on the Debtor being $26,250.00 delinquent in plan payments. Motion, Dckt. 60. Debtor's explanation as to why she was in default was the same as for the present motion, "payment delayed by political approval processes." Opposition, Dckt. 64. The court issued a conditional order of dismissal. Order, Dckt. 67. The Chapter 13 Trustee did not lodge with the court an order dismissing the case, which indicates that Debtor cured the $26,250.00 arrearage and made the next $10,500.00 plan payment as specified in the conditional order of dismissal.
>
> The Trustee is back, on a third Motion to Dismiss based on a $21,000.00 plan default. Motion, Dckt. 73. In opposition, Debtor provides her 'stock response' that it is the 'political approval process' which caused the default. Opposition, Dckt. 77. This opposition appears to be a cut and paste of the prior to [*sic*] oppositions. This identical opposition, caused by the third default strains the bounds of credibility.
>
> . . .
>
> Looking at the above [Schedule J expenses], it appears that the Debtor's defaults may be caused more by an unrealistic

budget for two adults living in a $1,150,000 home (Schedule A) and driving two older vehicles (2005 Infinity and 1998 Navigator with 304,495) which are prone to require more significant repairs than routine maintenance.

. . .

Status of The Simi Group, Inc.

The employer of both the Debtor and non-debtor spouse is listed as Simi Group, Inc. When the court reviewed the Secretary of State Website, the status for the corporation with the name The Simi Group, Inc., at the same address as listed on Schedule I for Debtor's and non-debtor spouse's employer, is stated to be Suspended. A LEXISNEXIS search states that the Secretary of State reports that the suspension has been in effect since November 2012. FN.1.

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https://w3.lexis.com/research2/pubrec/searchpr.do?_m=037b2d115ea9a1d8014b5a053a233869&_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkAb&_md5=dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1.

The person listed as the president of The Simi Group, Inc. by the Secretary of State is Daniel Patrick Desmond. A search of this court's files discloses that Daniel Patrick Desmond has filed three recent bankruptcy cases. Bankr. E.D. Cal. Nos. 12-38387, 13-3555, and 14-31728. In each of his three cases, Mr. Desmond has been represented by the same attorney as the Debtor in this case.

. . .

Simi Group, Inc.

Neither Mr. Desmond nor the Debtor list any ownership interest in Simi Group, Inc. on their respective schedules. In addition to identifying the address of the Simi Group, Inc., the Secretary of States reports that Daniel Desmond is the agent for service of process. LEXIS-NEXIS identifies Mr. Desmond as the president.

Whether owned by Debtor or not, it appears that the Simi Group, Inc. is not an entity authorized to do business in California.

. . .

RULING

> Cause exists to grant the Trustee the relief requested. However, it appears that it may be in the best interest of creditors to convert the case to one under Chapter 7 rather than dismiss it.
>
> At the hearing, no good reason [was given] for not dismissing this case. Debtor attempted to argue that her misstatements in this case and prior cases under penalty of perjury may have been "inadvertent." Counsel for Debtor (and her husband in his bankruptcy cases) states that Debtor and her husband own Simi Group, Inc., and could not explain why on multiple occasions both of them have stated under penalty of perjury that they own no stock in any corporations.
>
> With respect to failing to disclose the names of their spouse in the various bankruptcy cases, no credible explanation was provided.
>
> With respect to illegally operating a corporation, [its] corporate powers having been suspended, counsel for Debtor argued that Debtor could just treat it as a sole proprietorship. That conflicts with the various Schedules I filed in the multiple bankruptcy cases by Debtor and her husband stating that they were and are employed by the corporation. Further, such statements that Debtor would now want to contend she was a sole proprietorship raises a series of other issues, including the non-disclosure of such sole proprietorship and the failure to provide for self employment taxes.
>
> The Debtor is in default, the Debtor has knowingly failed to disclose assets, and the Debtor proposes to fund her plan with the illegal operation of the undisclosed corporation. This case is not being prosecuted in good faith."

15-22909; Civil Minutes, Dckt. 81.

CONSIDERATION OF CURRENT REQUEST TO EXTEND AUTOMATIC STAY

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor did not understand the various options and methods of rectifying a delinquency in plan payments and waited too long to communicate the issue to Debtor's Attorney. Dckt. 16.

Debtor asserts that the nature of her business (run along with a non-filing spouse) fluctuates because it relies on contracts to create software. Debtor states that the business was overly reliant on government contracts in the last year, but the business has since diversified its contracts to create a more stable flow of revenue.

Debtor testifies that it is her intention to pay all of the mortgage arrearage and a 100% dividend to creditors having general unsecured claims. Debtor does not testify as to how she, and her nonfiling spouse who has filed and had dismissed multiple bankruptcy cases, can now accomplish what they have failed to do in five prior bankruptcy cases. Merely telling the court, "we have diversified our contracts" does not provide credible, persuasive testimony that Debtor and her nonfiling spouse can now perform this Plan.

The Chapter 13 Plan requires monthly plan payments of $10,500.00. This is necessary to make a $5,272.00 monthly mortgage payment and a $4,350,00 monthly arrearage payment for the $848,000.00 debt secured by their $1,122,000.00 residence. Schedule D, Dckt. 10 at 13.

On Schedule I, Debtor states that she and her non-debtor spouse are employed by "Simi Group, Inc." Schedule I, *Id.* at 19. In checking on November 14, 2016, the California Secretary of State website, it is reported that the corporate powers of "The Simi Group, Inc.," for which Daniel Patrick Desmond (Debtor's spouse) is the Agent for Service of Process are "FTB Suspended." http://kepler.sos.ca.gov/. It appears that Debtor's income is from an entity that cannot do business in California. *See* Cal. Rev. Tax § 23301 (providing for the suspension of all corporate powers, rights, and privileges).

On Schedule I, Debtor states that the gross income that she and her husband receive from their suspended corporation is $14,500.00 per month. That equals $174,000.00 per year gross income. On the Statement of Financial Affairs, Debtor states under penalty of perjury that the gross income from wages or business for herself and her husband have been:

A. January 1, 2016–September 30, 2016.....$90,750 ($10,083/month avg.)

B. January 1, 2015–December 21, 2015.....$87,000 ($7,250/month avg.)

C. January 1, 2014–December 31, 2014.....$21,000 ($1,750/month avg.)

Statement of Financial Affairs, Part 2,Question 4; Dckt. 10 at 24-25.

Debtor also states that in 2016 she received $90,327.00 for "Corporate Loan Repayment." Statement of Financial Affairs, Part 2,Question 5; *Id.* at 25. No $90,000.00 account receivable for a "Corporate Loan" was listed on Schedule B in the prior bankruptcy case. 15-22909, Dckt. 1.

The Debtor has not 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. From the evidence presented, and there now being a heretofore undisclosed $90,000.00 asset in the prior case, Debtor has demonstrated her continuing bad faith in the filing and prosecution of bankruptcy cases. Debtor's only motivation appears to maintain a $1,000,000.00 lifestyle without the ability to pay for a $1,000,000.00 lifestyle.

Debtor does now disclose that Simi Group, Inc. is a corporation in which she may have an interest, but contends that it is just her husband's (Daniel Desmond's) company. Schedule B, Dckt. 10 at 6. In his most recent bankruptcy case, 14-31728, Daniel Desmond (represented by the same attorney in his multiple cases as the Debtor) stated under penalty of perjury that he had no interests in any corporations or business entities. 14-31728; Schedule B, Dckt. 30 at 4–7. However, on the Statement of Financial Affairs, Question 18, Mr. Desmond listed The SIMI Group, Inc. as a business for which he had 100% ownership. *Id.*; Dckt. 30 at 26.

The Debtor has not adequately addressed the intricate inter-leafing of nonproductive, dismissed bankruptcy filings by herself and her husband that create the following pattern:

Debtor Jennifer Ann Rianda	Filed	Dismissed	Dismissed	Filed	Daniel Patrick Desmond Filed Cases
			01/02/2013	10/16/2012	Chapter 13 Case 12-38387
Chapter 13 Case 13-23661	03/19/2013 (Filed two months after 12-38387 dismissed)	07/01/2013			
			02/12/2014	12/10/2013 (Filed five months after 13-23661 dismissed)	Chapter 13 Case 13-35555

			02/19/2015	11/30/2014 (Filed nine months after 13-35555 dismissed)	Chapter 13 Case 14-31728
Chapter 13 Case 15-22909	04/09/2015 (Filed five months after 14-31728 dismissed)	06/27/2016			
Current Chapter 13 Case 16-26966	10/19/2016 (Filed four months after 15-22909 dismissed)				

The Debtor and her non-debtor spouse show a pattern of filing a bankruptcy case, having it dismissed, and then filing a new bankruptcy case within a year (which new bankruptcy case will ultimately be dismissed).

Debtor having failed to rebut by clear and convincing evidence the presumption of bad faith, the Motion is denied. FN.3.

FN.3. In not extending the automatic stay "as to the Debtor," the court makes no ruling as to the automatic stay that applies to property of the bankruptcy estate. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to the Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4) Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate expressly provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate), and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.