UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 8, 2018 at 1:00 p.m.

1.	18-20812-B-13 JPJ-1	MATHEW BARNES Michael O'Dowd Hays	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-16-18 [19]

CONTINUED TO 5/15/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 5/10/18.

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The court will enter an appropriate minute order.

2.	18-21413-B-13 PSB-1 **Thru #3**	MOMOLILAAUFOGAA/LIU LOLANI Pauldeep Bains	MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC. 4-5-18 [15]

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The Motion to Value Collateral of OneMain Financial Services, Inc. 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)(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. 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 value the secured claim of OneMain Financial Services, Inc. at $6,605.00.

Debtors' motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by Debtor Momolilaaufogaa Lolani's declaration. Debtors are the owner of a 2013 Chevrolet Malibu ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $6,605.00 as of the petition filing date. As the owner, Debtors' 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. 1-1 filed by OneMain Financial services, Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of $8,391.46. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 $6,605.00. *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 court will enter an appropriate minute order.

3.	18-21413-B-13 PSB-2	MOMOLILAAUFOGAA/LIU LOLANI Pauldeep Bains	MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC. 4-5-18 [19]

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The Motion to Value Collateral of OneMain Financial Services, Inc. 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)(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. 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 value the secured claim of OneMain Financial Services, Inc. at $1,995.00.

Debtors' motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by Debtor Momolilaaufogaa Lolani's declaration. Debtors are the owner of a 2006 Chevrolet TrailBlazer ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $6,605.00 as of the petition filing date. As the owner, Debtors' 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. 3-1 filed by OneMain Financial services, Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does <u>not</u> secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of $8,930.25. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 $1,995.00. *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 court will enter an appropriate minute order.

4. 18-20332-B-13 WANDA BARBER MOTION TO CONFIRM PLAN
SDH-1 Scott D. Hughes 3-26-18 [18]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 35-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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the plan cannot be effectively administered. The amended plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Nationstar Mortgage in Class 1 for February 2018. The Trustee is therefore unable to fully comply with § 21.08(b) of the plan.

Second, the secured claim of Second Chance Mortgages, Inc. ("Second Chance") is misclassified as a Class 1 claim in § 3.07. The pre-written language of the form plan defines Class 1 claims as delinquent secured claims that mature after the completion of the plan. The plan duration is 60 months according to § 2.03 and Second Chance's proof of claim shows that the loan maturity date is June 28, 2022. Therefore, the loan will mature before the completion of the plan and the proper classification of this claim is Class 2A in § 3.08.

Third, as to Second Chance's objection to conduit payments, that objection is overruled. Second Chance asserts that conduit payments are not mandated by law or the local rules, and that such payments impair its claim in violation of § 1322(b)(2). Second Chance raises three reasons why the Debtor should provide it with direct payments rather than payments through the plan. First, Second Chance objects to the possibility of waiting an extra 2 to 4 weeks for the Trustee to remit payment to Second Chance. Second, Second Chance asserts that it may be willing to work with a Debtor if there is nonpayment, whereas a Trustee would move to dismiss the case without regard to the Debtor's situation. And third, Second Chance states that additional Trustee's fees arise from the conduit payments and this is an undue burden on the Debtor that can be avoided where the Debtor directly pays the creditor. Second Chance contends that the local practice of requiring conduit payments unduly impairs its lien and should not be permitted where the secured creditor objects. The Trustee has filed a response to Second Chance's objection.

The court acknowledges that while there is no inherent presumption that payments must be made by the trustee, *In re Lopez*, 372 B.R. 40 (9th Cir. BAP 2007), the court does have discretion to determine when direct payments may not be appropriate. *Giesbrecht v. Fitzgerald (In re Giesbrecht)*, 2010 WL 1956618 (9th Cir. BAP 2010). In this particular case, the Debtor has failed to make timely pre-petition payments to the creditor since April 28, 2010. Requiring the Debtor to make post-petition monthly contract installments to the Trustee would provide oversight and ensure that the Debtor is making payments to Second Chance, and that in turn facilitates the Debtor's ultimate goal of receiving a discharge. Any agreement made outside the plan may affect Debtor's ability to perform under the plan and cause potential delays that are prejudicial to other parties in interest.

Furthermore, the court is not persuaded that Second Chance is burdened by waiting less than 10 days, a timeline provided by the Trustee, to receive its payment or that waiting less than 10 days to receive payment from the Trustee is an impermissible modification of Second Chance's secured claim under § 1322(b)(2). Paragraph 6 of the promissory note attached to Second Chance's proof of claim, Claim No. 1, contemplates a 10-day grace period for monthly installment payments. In other words, the Debtor's loan terms already allow for a monthly payment within the Trustee's timeline. Consequently, the Debtor's loan terms - and thence Second Chance's secured claim - are

not being modified to accommodate a monthly plan payment by the Trustee.

The court is also not persuaded that the Trustee will move to dismiss the case upon nonpayment since it is in this court's experience that the Trustee in this case, Jan Johnson, often works with debtors, through their attorneys, to come to agreements for the reasonable cure of a default. The Trustee will ensure that Second Chance receives its payments through the plan and, if this case were dismissed at some future date, Second Chance can nonetheless work with the Debtor outside of bankruptcy.

Lastly, while a Trustee's fee arising from the conduit payments can be avoided if the Debtor were to directly pay Second Chance outside the plan, the court finds that the monthly contract installment of at most $21.79 per month in administrative fees, as stated by the Trustee, is not burdensome on the Debtor. Schedules I and J demonstrate Debtor's ability to make the plan payments, and Debtor's Declaration in Support of the Motion states that the plan is fair and feasible and she can afford to make the plan payment.

For reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. Second Chance's objection to receiving ongoing post-confirmation payments through the Trustee is overruled.

The court will enter an appropriate minute order.

5. 18-21262-B-13 JOHN SAECHAO
PGM-1 Peter G. Macaluso
Thru #6 and #12

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
4-5-18 [13]

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The Motion to Value Collateral of Schools Financial Credit Union 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)(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. 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 value the secured claim of Schools Financial Credit Union at $12,000.00.

Debtor's motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,000.00 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. 2-1 filed by Schools Financial 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 July 10, 2014, based on Claim No. 2-1. This is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,195.17. 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 $12,000.00. *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 court will enter an appropriate minute order.

6. 18-21262-B-13 JOHN SAECHAO
PGM-2 Peter G. Macaluso

MOTION TO AVOID LIEN OF CAPITAL ONE BANK
4-5-18 [18]

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 422(f)(1)(A) 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. 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 deny without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Capital One Bank ("Creditor") against the Debtor's property commonly known as 7720 McMullen Way, Sacramento, California ("Property").

Although the Debtor asserts that judgment was entered against it in favor of Creditor in the amount of $3,080.00 and recorded with the Sacramento County Recorder on or about February 9, 2018, no abstract of judgment was filed as an exhibit. In support of his motion, Debtor has filed an Involuntary Lien notice from the County of Sacramento Internal Services Agency County Clerk-Recorder. However, this notice does not state a judgment amount nor the property against which an involuntary lien was recorded.

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 his 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 court will enter an appropriate minute order.

7. 17-26363-B-13 MICHAEL SCHOOL
PSB-1 Pauldeep Bains

MOTION TO EMPLOY EDIE MILLER AS BROKER
4-14-18 [34]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Application/Motion to Employ Real Estate Broker is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to employ.

Debtor seeks to employ licensed real estate salesperson Edie Miller ("Miller") of Intero Real Estate Services pursuant to Local Bankruptcy Rule 9014-1(f)(1) and 11 U.S.C. § 327(a). The Debtor argues that Miller's appointment and retention is necessary to assist in establishing the fair market value of real property located at 11434 Pleasant Valley Road, Penn Valley, California ("Property") and to market and sell the Property for the benefit of the Debtor and all creditors in interest.

Miller testifies that he is has signed a listing agreement to list the Property and has met with the Debtor to discuss marketing and selling the Property. Miller states that he will sell the property for a commission of 6% of the purchase price, or 5% if he represents both buyer and seller. Miller testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Local Rule 2014-1 states that to insure public confidence in the integrity of the bankruptcy process, the verified statement that must accompany an Application for Employment of Professional Persons pursuant to Fed. R. Bankr. P. 2014(a) shall, after disclosure of any actual connections, close with the statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party-in- interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications for Employment which are not accompanied by a verified statement containing such a statement may be denied without prejudice.

Taking into account all of the relevant factors in connection with the employment and compensation of Miller, considering the declaration demonstrating that Miller does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Edie Miller as real estate salesperson for the for the Debtor on the terms and conditions set forth in the Residential Listing Agreement filed as dkt. 37, exh. A. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court will enter an appropriate minute order.

8.	18-20871-B-13 JPJ-1	VICTORIA RUGG Douglas B. Jacobs	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-16-18 [14]

CONTINUED TO 5/15/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 5/10/18.

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The court will enter an appropriate minute order.

9. 18-21272-B-13 JPJ-1 — STEPHEN/LESLY SAWYER — Nima S. Vokshori — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-16-18 [23]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtors have not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtors have not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Second, feasibility depends on the granting of a motion to value collateral for Springleaf Financial Services, which holds as collateral a 2009 Toyota RAV 4. The Debtors have failed to file, set for hearing, and serve on the respondent creditor and the Trustee a stand-alone motion to value collateral pursuant to Local Bankr. R. 3015-1(I).

Third, the terms for payment of the Debtors' attorney's fees are unclear and the plan cannot be effectively administered. Section 3.06 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtors' attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

Fourth, the plan understates the amount of the pre-petition arrears and monthly contract installment owed to Wells Fargo Bank. According to the proof of claim, the amount of pre-petition arrears is $23,538.89 and the monthly contract installment is $1,179.81. The plan will take approximately 70 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fifth, the Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

The plan filed March 6, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

10. 18-20994-B-13 BRIAN HAMILTON
JPJ-1 Samuel C. Williams

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-16-18 [18]

CONTINUED TO 5/15/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 5/10/18.

Final Ruling: No appearance at the May 8, 2018, hearing is required.

The court will enter an appropriate minute order.

11. 18-22164-A-13 DAWN BARKLEY
MJD-1 Matthew J. DeCaminda

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
4-26-18 [10]

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(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 March 7, 2018, due to Debtor's delinquency in plan payments (case no. 16-24457, dkts. 67, 84). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor states that the former case was filed to restructure her pre-filing mortgage arrears along with property taxes owed to the County of Sacramento. Debtor was also restructuring her automobile loan with Toyota Motor Credit and her unsecured debts, both priority and general. Debtor further states that her reasons for filing the current case are the same as those in the former case. Debtor asserts that she fell behind on plan payments in the previous case because she had a temporary lapse in employment. She contends that her circumstances have changed because she is now employed with adequate income to pay all of her responsibilities.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court will enter an appropriate minute order.

12. 18-21262-B-13 JPJ-1 **See Also #5-6**

JOHN SAECHAO
Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-11-18 [24]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

Feasibility depends on the granting of a motion to value collateral for Schools Financial Credit Union and a motion to avoid lien of Capital One. Although the motion to value collateral for Schools Financial Credit Union was granted at Item #5, the motion to avoid lien of Capital One was denied without prejudice at Item #6.

Therefore, the plan filed March 5, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.