

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 30, 2015 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

| | | | |
|----|------------------------|----------------|--|
| 1. | 15-21300-D-13 MJH-3 | JOSE RODRIGUEZ | MOTION TO CONFIRM PLAN 5-14-15 [33] |
|----|------------------------|----------------|--|

| | | | |
|----|------------------------|----------------------|---|
| 2. | 10-26002-D-13 JDP-1 | ROBERT/DEANNE LASHIN | MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC 6-2-15 [44] |
|----|------------------------|----------------------|---|

3. 15-20103-D-13 CHARANJIT SINGH
RD-1

MOTION TO CONFIRM PLAN
5-8-15 [63]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

4. 12-25206-D-13 JOANNA MATTHEWS
PK-1

MOTION TO MODIFY PLAN
5-13-15 [32]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because the moving party failed to serve any of the creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R Bankr. P. 2002(g), and failed to serve one of them, the Franchise Tax Board, at all.

As a result of these service defects, the motion will be denied and the court need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

5. 15-21506-D-13 BERNIE GARZA
JM-1

MOTION TO CONFIRM PLAN
4-24-15 [22]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

6. 15-23006-D-13 CHERYL HULSEY
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-29-15 [18]

7. 10-34307-D-13 RYAN/SARAH FINE
JCK-5

MOTION TO MODIFY PLAN
5-18-15 [50]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

8. 14-32307-D-13 JOSE HERNANDEZ
PLL-1

MOTION TO CONFIRM PLAN
5-22-15 [66]

Final ruling:

This case was dismissed on May 28, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

9. 15-23213-D-13 KULWANT/KARMJIT PAWAR
RDG-1

CONTINUED MOTION TO DISMISS
CASE
5-5-15 [15]

10. 14-32216-D-13 ERIC BARBARY AND MARIAN
CAH-1 CORK-BARBARY

MOTION TO CONFIRM PLAN
4-27-15 [26]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve the IRS at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(c), or at all other than through the U.S. Attorney's Office.

As a result of this service defect, the motion will be denied and the court need not reach the issues raised by the oppositions at this time. The motion will be denied by minute order. No appearance is necessary.

| | | | |
|-----|---------------|--------------|------------------------|
| 11. | 14-32516-D-13 | TINA VAZQUEZ | MOTION TO CONFIRM PLAN |
| | CAH-1 | | 4-27-15 [36] |

| | | | |
|-----|---------------|-------------------|------------------------|
| 12. | 14-31517-D-13 | RICK/DENISE HUBER | MOTION TO CONFIRM PLAN |
| | PK-2 | | 5-14-15 [48] |

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties utilized an out-of-date PACER matrix and thus failed to serve all the creditors who had filed claims in the case as of the date of service at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); and (2) the proof of service states that The Wolf Firm was served by email, but lists only a street address; further, The Wolf Firm has filed a request for special notice designating a street address; thus, it should have been served by mail at that address.

As a result of these service defects, the motion will be denied and the court need not reach the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

| | | | |
|-----|---------------|----------------|------------------------------|
| 13. | 15-22818-D-13 | SURINDER SINGH | OBJECTION TO CONFIRMATION OF |
| | RDG-1 | | PLAN BY RUSSELL D. GREER |
| | | | 5-29-15 [14] |

| | | | |
|-----|---------------|-------------------|-----------------------|
| 14. | 12-29222-D-13 | KYLE/TRACY TROCHE | MOTION TO MODIFY PLAN |
| | OAG-3 | | 5-3-15 [59] |

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

This is the fourth plan the debtors have proposed in the 11-1/2 months this case has been pending; none has been confirmed. In each of their three amended plans, they have increased their plan payment by small amounts, from \$410 to \$510 to \$655 to \$846 per month. The dividend to general unsecured creditors has been increased from 1% to 3% to 7% to 11%. Each increase in the plan payment and the dividend was the result of the trustee's objection to the earlier plan.

The debtors began by proposing to pay \$410 per month for 60 months so as to pay 1% of general unsecured claims estimated at \$194,756. The trustee objected that the plan did not meet the disposable income test for two reasons. First, the debtors' Form 22C and Schedule J showed a \$600 per month deduction for childcare whereas the debtors had testified at the meeting of creditors their daughter was not in daycare or preschool at the time. Second, the debtors' Form 22C and Schedule I showed a \$997 per month deduction for mandatory contributions to retirements plans whereas the debtors had testified that sum was actually for voluntary retirement contributions. The trustee objected to the latter deduction on the additional grounds that it is not permitted by Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (9th Cir. BAP 2012), and that by taking that deduction, the debtors had not proposed their plan in good faith. The court set a briefing schedule; the debtors, however, filed nothing, and the objection was sustained.

When the debtors failed to file an amended plan, the trustee filed a motion to dismiss; in response, the debtors filed an amended Form 22C and amended Schedules I and J. On the schedules, the debtors took out the \$997 in retirement contributions but increased their tax withholdings by \$952. The combined effect of these changes was to bring debtor Ryan Kamerzell's take-home pay to just \$47 per month more than it had been before. The debtors adjusted their living expenses upward by a total of \$47, including increasing their gym membership payment to \$150 per month, such that their monthly net income was exactly the same as it had been on their original schedules.

The trustee's motion to dismiss was conditionally granted - the debtors were required to set an amended plan for hearing by January 5, 2015 or face dismissal on the trustee's application. On January 3, 2015, the debtors filed an amended plan calling for a \$100 per month increase in their plan payment beginning in January and a 3% dividend on general unsecured claims again estimated at \$194,756. They also filed further amended Schedules I and J on which they reduced certain living expenses by a total of \$100 to support the new plan payment. Ten days later, they filed a motion to confirm the amended plan, testifying in support that their child is in preschool. As for the \$997 retirement deduction, they stated only that a second amended Schedule I had been filed.

The trustee opposed confirmation of that plan on the grounds that (1) the debtors had offered no explanation as to why they had increased their withholdings by an amount almost equivalent to the amount they had been voluntarily contributing to their retirement accounts; (2) the debtors' Form 22C continued to include a \$997

deduction as a qualified retirement deduction, despite Parks; and (3) as the joint debtor is not employed, the preschool expense was not reasonable or necessary. In response to the trustee's opposition, the debtors purported to withdraw their motion. They then filed further amended Schedules I and J on which they reduced their childcare expenses from \$600 per month to \$256, which they testified consisted of \$100 "related to care of our children for appointments they cannot attend" and \$156 per month for school expenses of their six-year old child. They added that their tax withholdings were increased to avoid owing income taxes at the end of the year. The childcare change would have resulted in a \$344 increase in their plan payment; however, the debtors increased their entertainment expense such that their proposed new plan payment would be \$655, an increase of \$145 over the earlier figure. These changes resulted in an increase in the dividend to unsecured creditors to 7%.

The trustee opposed confirmation of that plan on the basis that the debtors had failed to provide any evidence to support an increase in their tax withholdings equal to their previous retirement contribution, while failing for almost nine months to propose any meaningful increase in their plan payment. In response to that objection, the debtors purported to withdraw their motion. The debtors then filed the present motion, along with further amended Schedules I and J (their fifth set in nine months) on which they have reduced their tax withholdings by \$197; they propose to increase their plan payment to \$846 and the dividend to 11%. The debtors' testimony concerning the tax withholdings is this: "In response to the trustee's concerns over the prior changes I made to my payroll withholding, I am worried that we may owe income tax for 2015 since the retirement deduction was pre-tax. However, I want to do what I can to resolve the trustee's concerns. I have changed my payroll withholding to M-4 which changes my withholding from \$3,199.21 to \$3,002.70 a difference of \$196.51 per month." Debtors' Decl., filed April 14, 2015, at 3:25-4:2.

The trustee again objects that the debtors have again failed to provide any evidence to support the increase in their tax withholdings. The trustee is correct. The debtors' testimony - that they fear they will owe taxes at the end of the year - is nothing but speculation. Having reviewed the debtors' 2014 tax returns, the trustee estimates their tax liability to be 20% of their income, or \$2,100 per month for tax, Medicare and social security withholdings, as opposed to the \$3,002 shown on the debtors' most recent Schedule I. Thus, it appears the debtors are overwithholding by \$902 per month.

These figures bring the case almost full circle to where it began over 11 months ago - with the debtors proposing to retain for themselves \$902 per month the trustee believes is properly counted as part of their monthly disposable income that should be going to creditors. The debtors have forced the trustee to object to and the court to consider four successive plans, with each of the three amended plans making only small adjustments to the plan payment and the dividend to unsecured creditors. With their first two plans, the debtors proposed to retain for themselves \$344 per month more than was reasonable for their childcare expense, and with all four plans, they have proposed to retain for themselves, first as a voluntary retirement contribution and then by way of excessive tax withholding, almost \$1,000 per month the trustee contends should be going instead to their creditors. The court agrees with the trustee that this plan has not been proposed in good faith. Accordingly, the motion will be denied.

The motion will be denied by minute order. No appearance is necessary.

16. 15-23426-D-13 MANJIT GILL AND AMANDEEP MOTION TO VALUE COLLATERAL OF
TOG-1 KAUR BANK OF AMERICA, N.A.
5-14-15 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

17. 15-20427-D-13 OSCAR WILLS MOTION TO VALUE COLLATERAL OF
HLG-2 FORD MOTOR CREDIT COMPANY, LLC
5-14-15 [51]

Final ruling:

This is the debtor's motion to value collateral of Ford Motor Credit. The motion will be denied because the proof of service is not signed under oath as to the facts of service, as required by 28 U.S.C. § 1746, but only as to the facts of the declarant's citizenship, residency, age, and non-party status. The motion will be denied by minute order. No appearance is necessary.

18. 15-20427-D-13 OSCAR WILLS MOTION TO CONFIRM PLAN
HLG-3 5-14-15 [56]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party utilized an out-of-date PACER matrix and thus failed to serve all the creditors who had filed claims in the case as of the date of service at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving party failed to serve the Franchise Tax Board, which has filed a claim in this case, at all; and (3) the moving party failed to serve the co-debtor listed on the debtor's Schedule H, as required by Fed. R. Bankr. P. 2002(b) (requiring service on all creditors). Given the extremely broad definition of "creditor" in the Bankruptcy Code (§ 101(5) and (10)), which certainly includes persons obligated on debts owed by the debtor, the moving party was required to serve the co-debtor listed on Schedule H.

As a result of these service defects, the motion will be denied and the court need not reach the issue raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

19. 10-25829-D-13 RENEE WATSON
HWW-4

MOTION TO MODIFY PLAN
5-26-15 [73]

20. 15-22530-D-13 JAMEESE GUESS
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-15-15 [33]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response has been filed. The objection is supported by the record. The court will sustain the trustee's objection to the debtor's claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

21. 15-22732-D-13 MAGDALENA ALVARADO
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-1-15 [33]

22. 15-22732-D-13 MAGDALENA ALVARADO
ULC-1

MOTION TO VALUE COLLATERAL OF
STOCKTON MANAGEMENT AND
DEVELOPMENT CORP.
5-29-15 [28]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Stockton Management and Development Corp. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Stockton Management and Development Corp.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

23. 15-22848-D-13 MELITA TABORA
BHT-1

OBJECTION TO CONFIRMATION OF
PLAN BY CHRISTIANA TRUST
6-3-15 [25]

Final ruling:

This case was dismissed on June 8, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

24. 15-22848-D-13 MELITA TABORA
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-29-15 [22]

Final ruling:

This case was dismissed on June 8, 2015. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

25. 15-22853-D-13 CHRISTINA CAMACHO
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-29-15 [17]

26. 15-23764-D-13 DEBORAH HOOKER
ADR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
5-28-15 [13]

Final ruling:

This case was dismissed on May 26, 2015. As a result the motion will be denied by minute order as moot. No appearance is necessary.

27. 15-23369-D-13 JESUS MARTINEZ AND SILVIA MOTION TO VALUE COLLATERAL OF
TOG-1 MORENO FARMERS AND MERCHANTS BANK
5-13-15 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Farmers and Merchants Bank at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Farmers and Merchants Bank's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

28. 14-30972-D-13 PAMELA BECKER MOTION TO CONFIRM PLAN
MDK-1 4-27-15 [43]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the notice of motion and motion, declaration, plan, and proof of service were all filed as a single document rather than separately, as required by LBR 9014-1(d)(3) and (e)(3), LBR 9004-1(a), and the court's Revised Guidelines for the Preparation of Documents, EDC 2-901 (Rev. 1/17/14) (the "Guidelines"); (2) the moving party failed to serve the creditor requesting special notice in this case at its designated address, as required by Fed. R. Bankr. P. 2002(g); (3) the moving party failed to serve the Franchise Tax Board, which has filed a claim in this case, at all, as required by Fed. R. Bankr. P. 2002(b); (4) the plan fails to provide for the filed secured claim of the Franchise Tax Board; (5) the proof of service does not contain a caption, as required by the Guidelines; and (6) the moving party failed to serve the co-debtor listed on Schedule H, as required by Fed. R. Bankr. P. 2002(b) (requiring service on all creditors). Given the very broad definition of "creditor" in the Bankruptcy Code (§ 101(5) and (10)), which certainly includes persons obligated on debts owed by the debtor, the moving party was required to serve the co-debtor listed on Schedule H.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

29. 15-21983-D-13 JUAN/NADINE MORGA CONTINUED OBJECTION TO
JAR-1 CONFIRMATION OF PLAN BY BBCN
BANK
5-6-15 [19]

30. 15-21983-D-13 JUAN/NADINE MORGA
RDG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-1-15 [16]

31. 12-35291-D-13 FRANK/LORNA THOMSON
RAC-3

MOTION FOR SUBSTITUTION AND
SUGGESTION OF DEATH
5-20-15 [50]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed to the motion to substitute party in interest pursuant to FRBP 7025 and the relief requested in the motion for substitution is supported by the record. As such the court will grant the Motion for Substitution and the moving party is to submit an appropriate order. No appearance is necessary.

32. 15-20091-D-13 SONIA MCDADE-THREADGILL
GMW-3

MOTION TO CONFIRM PLAN
5-18-15 [68]

33. 13-21396-D-13 RICK/MELANIE PAYNE
TBK-6

MOTION TO MODIFY PLAN
5-5-15 [106]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

34. 14-31998-D-13 YOLANDA BURGIN
CAH-2

MOTION TO CONFIRM PLAN
4-27-15 [38]

35. 12-24906-D-13 ANTONIO/MARCIA GUERRERO
JDP-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
6-12-15 [50]

36. 15-24507-D-13 LILLIAN GLEASON
RLG-1

MOTION TO EXTEND AUTOMATIC STAY
6-9-15 [9]

Tentative ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The court intends to deny the motion for the following reasons. First, the notice of hearing gives the time of the hearing as 10:00 a.m. in the caption but 2:30 p.m. in the text. As the notice did not purport to require advance written opposition, potential respondents likely understood they could oppose the motion by appearing at the hearing. Because the text of the notice states that the hearing will be held at 2:30 p.m., it is possible interested parties would appear at that time, and thus, would not have the opportunity to be heard.

Second, the notice of hearing does not state whether written opposition must be filed, as required by LBR 9014-1(d)(4). Third, the moving party failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

Fourth, the debtor has failed to show by clear and convincing evidence that there has been a substantial change in her financial or personal affairs since the dismissal of the prior case or any other reason to believe that this case will be concluded with a confirmed plan that will be fully performed. The debtor testifies that her self-employment income has increased; however, according to her Schedule I, as compared with her most recent Schedule I in the prior case, filed five months ago, her self-employment income has increased by only \$73 per month gross, a 1.1% increase.

The only significant change to the debtor's circumstances is that she testifies she has a roommate who will be moving in in July of 2015, who will provide additional income and help with expenses. The amount by which the roommate is expected to contribute is not quantified. The debtor's plan in this case calls for a plan payment of \$5,647 per month whereas her monthly net income according to her Schedule J is only \$3,710. Unless the roommate can be expected to make up the difference, \$1,937 per month, it does not appear the plan will be feasible. Finally, the most recent plan in the prior case, filed six months ago, called for a plan payment of only \$3,276 per month, which the debtor was unable to make.

For the reasons stated, the court intends to deny the motion. In the alternative, the court will consider granting the motion on an interim basis for a short time to permit the debtor to file a notice of continued hearing that gives the correct hearing date and time, to serve it on all parties-in-interest at their correct addresses, and to supplement the record. The court will hear the matter.

| | | | |
|-----|---------------|----------------|------------------------|
| 37. | 11-41810-D-13 | FRANK CHIRIBEL | MOTION TO APPROVE LOAN |
| | CJO-1 | | MODIFICATION |
| | | | 6-9-15 [52] |

| | | | |
|-----|---------------|--------------|-------------------------------|
| 38. | 12-33715-D-13 | MARIA ARAIZA | MOTION TO VALUE COLLATERAL OF |
| | JDP-1 | | U.S. BANK, N.A. |
| | | | 6-16-15 [18] |

| | | | |
|-----|---------------|-----------------|------------------------|
| 39. | 10-31926-D-13 | PATRICIA NELSON | MOTION TO APPROVE LOAN |
| | CJO-1 | | MODIFICATION |
| | | | 6-9-15 [71] |

Tentative ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion will be denied for the following reasons. First, the motion was set for hearing on a date reserved for hearings in chapter 13 cases assigned to the Sacramento Division, whereas this case is assigned to the Modesto Division. Second, the moving party failed to serve Deutsche Bank National Trust Company through the attorney who filed a request for special notice on its behalf six days before the motion was served. Thus, the motion will be denied as to that creditor for that reason. Third, the motion will be denied as to all creditors because it contains misinformation. Specifically, the motion incorrectly informs creditors that pursuant to § 362(c)(3) of the Code, the automatic stay will terminate after 30 days unless the stay is extended. However, because the debtor has been a debtor in two cases pending and dismissed within the year prior to the filing of this case, the automatic stay did not go into effect in this new case at all. See § 362(c)(4)(A)(i).

Fourth, the motion will be denied as to all creditors because the moving party has failed to overcome by clear and convincing evidence the presumption that this case was not filed in good faith. The presumption arises here under all three tests of § 362(c)(4)(D)(i): (1) the debtor was a debtor in two cases pending with the one-year period; (2) one of those cases was dismissed after the debtor failed to file a document required by the Code and the debtor has not shown a substantial excuse for that failure; and (3) the debtor has not shown that there has been a substantial change in her financial or personal affairs since the dismissal of the prior case or any other reason to believe that this case will be concluded with a confirmed plan that will be fully performed.

Although the motion and memorandum of points and authorities refer to a declaration of the debtor, there is no such declaration on file; thus, there is no evidence in support of the motion. Further, the motion and memorandum of points and authorities do not mention the debtor's most recent prior case at all, only the first one. The moving papers do not disclose the case numbers of the two prior cases, the dates they were filed, or the dates they were dismissed. The court has determined the debtor has filed two prior cases that have been dismissed within the year prior to the filing of this case - Case Nos. 14-91486 and 15-90326.

The first case was filed October 31, 2014 and dismissed February 25, 2015 for failure to confirm a plan after the trustee's objection to confirmation of the original plan was sustained. The trustee's objection included 11 different grounds, including that the debtor had failed to provide the required tax returns and payment advices, had failed to provide a Class 1 Checklist for her mortgage creditor, had failed to seek to value collateral for a claim proposed in the plan to be reduced to \$0, and had proposed a plan payment that was not feasible. The moving papers in the present case offer no explanation as to whether the debtor corrected any of those defects or why she did not seek to confirm an amended plan in the first case. The debtor's second case was dismissed for failure to file a statement of social security number.¹ The moving papers provide no explanation for this failure; indeed, they do not mention the second case.

Finally, the moving papers do not suggest there has been any change in the

debtor's circumstances. They do indicate the debtor remained current with her plan payments in the first case, which suggests she could do so in this case. However, in addition to making plan payments, every chapter 13 debtor, although he or she is likely not familiar with bankruptcy law, has a duty to ensure the case is properly prosecuted. In this instance, the debtor was served with the trustee's 11 objections to confirmation of her original plan, and notice of the trustee's motion to dismiss. Yet neither the debtor nor her attorney appeared at the hearing on either the objection to confirmation or the motion. And the debtor did not cause her attorney to file opposition to either one. The debtor was also served with notice of the court's intent to dismiss the second case if her plan, schedules, and statements, including the statement of social security number, were not timely filed. Yet she failed to ensure that her statement of social security number was filed.

The court notes that the debtor was a debtor in two prior cases in addition to the two discussed above. In a 2009 chapter 13 case, a plan was confirmed and the case was pending for 18 months before being dismissed. A 2010 case was dismissed for failure to file required schedules and statements. Thus, the debtor can be presumed to have at least some familiarity with the way chapter 13 cases work. She filed the two most recent prior cases but did not take steps to prevent them being dismissed. To the extent, if any, her attorney played a role in the dismissals, some responsibility must fall on the debtor for choosing to file this new case through the same attorney. The debtor has offered no reason for her failure to file the statement of social security number in the second case or her inability to obtain or even to seek confirmation of an amended plan in the first case.

To conclude, the debtor has failed to overcome by clear and convincing evidence the presumption that this case was not filed in good faith. Accordingly, the motion will be denied by minute order.² The court will hear the matter.

1 According to the Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Are Not Timely Filed (the "Notice") in the case, the schedules and other statements were required to be filed by the date on which the case was dismissed. The statement of social security number was due earlier; the case was dismissed after the debtor failed to file a statement of social security number by that date.

2 The court also has questions concerning the attorney's fees paid to the debtor's counsel for the first and second cases; those questions will be addressed in a separate order.

41. 14-23843-D-13 ELVIN/HURLENE BAKER
CJO-1

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
6-11-15 [54]

Tentative ruling:

This is the debtors' motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion will be denied for the following reasons. First, the moving parties failed to serve Ocwen Loan Servicing through the attorney who filed a request for special notice on its behalf three days before the motion was served. Thus, the motion will be denied as to that creditor for that reason. Second, the motion will be denied as to all creditors because it contains misinformation. Specifically, the motion incorrectly informs creditors that pursuant to § 362(c)(3) of the Code, the automatic stay will terminate after 30 days unless the stay is extended. However, because the debtors have been debtors in three cases pending and dismissed within the year prior to the filing of this case, the automatic stay did not go into effect in this new case at all. See § 362(c)(4)(A)(i).¹

Third, the motion will be denied as to all creditors because the moving parties have failed to overcome by clear and convincing evidence the presumption that this case was not filed in good faith. The presumption arises here under all three tests of § 362(c)(4)(D)(i): (1) the debtors were debtors in three cases pending with the one-year period; (2) two of those cases were dismissed after the debtors failed to file a document required by the Code and the debtors have not shown a substantial excuse for that failure; and (3) the debtors have not shown that there has been a substantial change in their financial or personal affairs since the dismissal of the next most previous case or any other reason to believe that this case will be concluded with a confirmed plan that will be fully performed.

The debtors have submitted a declaration and their attorney has filed a memorandum of points and authorities. The memorandum mentions only one of the debtors' three prior cases - the second one; the debtors' declaration mentions two of them - the second and third, but not the first, which was both filed and dismissed less than a year ago. The declaration does not state the reason the second case was dismissed; as to the third, the debtors state it was dismissed for failure to file schedules and a plan. They do not state why they failed to file the required documents in the third case. Actually, the third case, like the first, was dismissed for failure to file a statement of social security number, not for failure to file the schedules and other statements.²

According to the memorandum, the debtors' second case, the only one of the three in which they filed schedules, statements, and a plan, was dismissed for failure to confirm a plan. The docket in that case reveals that the trustee and a secured creditor both objected to confirmation of the debtors' proposed plan. The trustee's objection was sustained; the creditor's was overruled as moot. The debtors failed to file an amended plan, and the case was dismissed. Neither the motion, the memorandum, nor the debtors' declaration in the present case offers an explanation as to whether the debtors corrected the defects found by the trustee and the creditor or why they did not seek to confirm an amended plan in the second case.

In their declaration in support of this motion, each of the debtors testifies: "I have acquired a new job since my last case was dismissed. This job provides me with regular income." Decl. at 2:23-24. The court cannot determine, however, whether the debtors acquired their new jobs "since the dismissal of the next most

previous case," as required for a showing under § 362(c)(4)(D)(i)(III), because where required to disclose on their Schedule I in this case how long they have been employed at their current jobs, both the debtors left blanks.

The debtors also testify they made four plan payments in their second case, which was the number that came due before the case was dismissed. The memorandum also indicates they remained current with their plan payments in that case, which suggests they could do so in this case. However, in addition to making plan payments, every chapter 13 debtor, although he or she is likely not familiar with bankruptcy law, has a duty to ensure the case is properly prosecuted. In this instance, the debtors were served with the trustee's and the creditor's objections to confirmation of their original plan and notice of the trustee's motion to dismiss. Yet neither the debtors nor their attorney appeared at the hearings on the objections or the motion. And the debtors did not cause their attorney to file opposition to any of them.

The debtors were also served with notice of the court's intent to dismiss the first and third cases if their plan, schedules, and statements, including their statements of social security number, were not timely filed. In both cases, they failed to ensure that statements of social security number were filed. In short, the debtors filed three prior cases within a year but did not take steps to prevent them being dismissed. To the extent, if any, their attorney played a role in the dismissals, some responsibility must fall on the debtors for choosing to file this new case through the same attorney. The debtors have offered no reason for their failure to file the statements of social security number in the first and third cases or their inability to obtain or even to seek confirmation of an amended plan in the second case.

The only evidence the debtors have offered to demonstrate this new case was filed in good faith is that they have new jobs. However, failure to make plan payments was not the problem in any of the three prior cases. Further, they have failed to indicate, where required to do so, how long they have had those jobs; thus, the court cannot determine whether they got the new jobs since the next most previous case was dismissed. Finally, the debtors have failed to even suggest a substantial excuse for their failure to file statements of social security number in two prior cases.

To conclude, the debtors have failed to overcome by clear and convincing evidence the presumption that this case was not filed in good faith.³ Accordingly, the motion will be denied. The court will hear the matter.

1 The debtors mention two of their three prior cases in their declaration, and acknowledge that the stay "means there is no automatic stay under § 362(a)." Debtors' Declaration, filed June 15, 2015 ("Decl."), at 2:15.

2 According to the Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Are Not Timely Filed (the "Notice") in each case, the schedules and other statements were required to be filed by a date after the date on which the case was dismissed. The cases were dismissed after the debtors failed to file a statement of social security number by the date set forth in the Notice.

3 The court also has questions concerning the attorney's fees paid to the debtor's counsel for the first three cases; those questions will be addressed in a separate order.

43. 12-25453-D-13 JESUS/LEAH CALVO
CJY-3

MOTION TO VALUE COLLATERAL OF
KEYBANK
6-8-15 [48]

44. 12-39388-D-13 CAROLINA CAHUE
PGM-5

CONTINUED MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTOR'S ATTORNEY
5-4-15 [61]

Tentative ruling:

This is the application of the debtor's counsel for additional fees in the amount of \$600. The trustee has filed opposition. For the following reasons, the motion will be denied.

In support of the motion, Counsel submitted time records purporting to demonstrate that he spent 10.25 hours on the case prior to confirmation of the plan, another 4.0 hours on anticipated post-confirmation services, and another 3.4 hours on substantial and unanticipated post-confirmation services. Counsel appears to characterize the pre-confirmation and anticipated post-confirmation services as services covered by the flat fee he agreed to accept at the commencement of the case, \$4,000. At the hourly rate Counsel applies in this case, \$300, his fees for pre-confirmation and anticipated post-confirmation services, if billed on an hourly basis, would amount to \$4,275, or \$275 more than the flat fee. Counsel does not seek approval of those excess fees.

Instead, of the 3.4 hours of unanticipated post-confirmation services, Counsel seeks approval of fees for only 2.0 hours, or \$600. The trustee opposes the motion on the ground that the services for which Counsel seeks additional fees were of a type that were within the scope of services intended to be covered by the flat fee. As the trustee points out, the applicable local rule provides that "[g]enerally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." LBR 2016-1(c)(3). The trustee states that these are the services that were performed in this case.

The trustee is correct. The additional services - the ones Counsel refers to as substantial and unanticipated - were necessitated by the filing of a proof of claim by the debtor's first trust deed holder that included pre-petition arrears amounting to a single mortgage payment. The proof of claim was filed after the debtor's original plan was confirmed. As the plan had not provided for the mortgage arrears, the plan had to be modified. The plan was modified in only one way. In Class 4 (claims paid directly by the debtor), Counsel added one line: "Citi Bank - arrears paid directly by debtor - \$611.61." The local rule provides that, generally, modifying the plan to conform to claims filed is within the scope of the

services that should be covered by the flat fee; that general proposition governs here.

For the reasons stated, the motion will be denied. The court will hear the matter.

1 "If the fee under this Subpart [the flat fee] is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees." LBR 2016-1(c)(3).