UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 7, 2017 at 1:00 p.m.

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1. 14-21111-B-13 BARBARA STELTER — MOTION TO MODIFY PLAN
MDA-4 Mary D. Anderson — 6-22-17 [91]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $48,989.93, which represents approximately 12 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, any attorney's fees and costs must proceed by a separate motion for substantial and unanticipated post-confirmation services pursuant to 11 U.S.C. § 330. The previous order confirming plan filed on May 12, 2014, approved attorney's fees of the Debtor's former attorney in the amount of $3,300.00 paid prior to the filing of the petition and $0.00 through the plan.

Third, the plan provides for improper treatment for repayment of the Trustee's refund in Class 2B. Class 2 claims are defined in Section 2.09 of the plan as secured claims that are modified by the plan or have matured or will mature before the plan is completed. The money the Trustee sent to the Debtor does not meet this definition. The amount of $1,568.93 was the amount the Trustee was holding when the case was converted to Chapter 7.

Fourth, modified plan understates the pre-petition arrears owed to El Dorado Savings Bank and understates the amount of the secured claim of 800 Loan Mart. The proof of claim filed by El Dorado Savings Bank shows $33,121.48 in pre-petition arrears and the proof of claim filed by 800 Loan Mart shows a $13,699.84 secured claim. The plan will take approximately 71 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). In order for the plan to complete in 60 months, the payment for the remaining 20 months must be no less than $5,205.00.

Fifth, the plan duration is unclear since Section 1.03 states that the plan duration is 60 months but the Additional Provisions shows payments for a total of only 56 months.

Sixth, the Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). The most recently filed Schedule I and J, filed September 26, 2016, shows that the Debtor's monthly net income is $-689.93. Although the Debtor has filed a declaration stating that her health has improved and her health insurance

premiums and co-pays have decreased, the information provided in the declaration does not provide adequate evidence of the Debtor's ability to make the monthly plan payments.

While Creditor El Dorado Savings Bank filed an opposition, the court cannot determine whether there was sufficient service of process because a service list was not attached to the proof of service.

For the six reasons stated above, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

2. 14-29215-B-13 JEFFERY/SANDRA THOMAS CONTINUED MOTION TO MODIFY PLAN
JPJ-3 Mary Ellen Terranella 5-24-17 [91]

Tentative Ruling: The Trustee's Motion for Post-Confirmation Modification of the Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification in part and confirm the modified plan.

This matter was continued from July 17, 2017, to allow the Debtors to file amended schedules to substantiate their expenses. Any objection to the Debtors' expenses were to be filed by July 25, 2015, and any response by the Debtors were to be filed by August 1, 2017.

Chapter 13 Trustee Jan Johnson requests that the court enter an order modifying the plan increasing plan payments by $500.00 per month to $2,289.00 effective June 25, 2017. Trustee asserts that the Debtor's additional expenses of $500.00 on Schedule J for unreimbursed occupation expenses are unsubstantiated. Trustee states that the explanation provided by the Debtors in their declaration does not provide sufficient detail and there are no documents or other evidence supporting their assertion that these are actual, reasonable, and necessary monthly expense.

Debtors filed a response listing the various expenses that relate to Debtor's employment in law enforcement consisting of: supplies including paper, cartridges, notepads, pens, and the like for an at-home printer used off hours to track work business; off-duty weapons that although not required for the job are strongly recommended; ammunition and range fees for range practice; gas and parking for court hearings; and haircuts that satisfy CHP hair-length requirements. Mr. Thomas states in his declaration filed July 28, 2017 [dkt. 107] that these expenses are accurate, reasonable, and necessary. However, the veracity of that testimony-and the entire declaration for that matter-are called into question by Mr. Thomas' other statement in the declaration that, on the one hand, the Debtors "are doing the very best they can do" and they "have trimmed as much as [they] could from [their] expenses" and yet, on the other hand, they report on the Schedule I filed July 17, 2017, dkt. 101, at line 5.c., that they continue to make "voluntary contributions for retirement plans" of $245.00 monthly. *See Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012).

In short, the court finds that the testimony in Mr. Thomas' declaration of July 28, 2017, is not credible which means, as the Trustee points out, there are no documents and there is no other evidence that establishes the claimed monthly expenses of $500.00 are actual, reasonable, and necessary. Therefore, the court finds that plan payments must be increased by $500.00 per month.

The Trustee's motion to modify is granted in part and plan payments shall be increased to $2,289.00 per month.

The court will enter an appropriate minute order.

3. 11-21232-B-13 LESZEK/IWONA FEDYCKI — MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS
MS-3 Mark Shmorgon — 7-24-17 [161]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 compel the production of documents and the motion requesting attorney's fees.

Debtors seek to compel creditor Antonio M. Averlar dba Santa Clara Reality ("Creditor") to respond to propounded discovery. The discovery included document production requests. The Debtors also ask for sanctions against the creditor, including awarding attorney's fees for the bringing of this motion or, in the alternative, a combination with an order that creditor's appraisal be disallowed.

On April 21, 2017, Debtors served their Request for Production of Documents, Set 1 (ONE). The deadline to complete the request was set for May 31, 2017.

On May 17, 2017, Debtors received an e-mail from Creditor's counsel asking for an extension to June 7, 2017. The extension was granted.

On June 7, 2017, Debtors received complete responses to the effect of "discovery is continuing." Debtors state that they accepted these responses with hope that responses would be forthcoming up to the court's cut off for discovery, which was set for July 17, 2017.

On June 19, 2017, Creditor's appraiser, Rick Sutliffe conducted the appraisal at Debtors' property at which Debtors' counsel was present.

By July 18, 2017, after the discovery cut-off date, Debtors failed to receive further responses to their request for production of documents. That same day, Debtors' attorney left a voice mail for Creditor's counsel.

The next day on July 19, 2017, Debtor's counsel mailed his meet and confer letter to Creditor's counsel advising that he was attempting in good faith to resolve the discovery dispute and included his availability to communicate via email, mail, telephone, and in person. Later that day Debtor's counsel received an email stating that Creditor's counsel was on vacation and would respond on July 24, 2017.

On July 24, 2017, no response was received by Debtor's counsel and he proceeded with the filing of this motion.

No opposition has been filed by Creditor's counsel.

Discussion

Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permits the party propounding discovery to move to compel responses. Failure to file a timely objection to document production requests constitutes a waiver of any objection. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9 Cir. 1992). The court will enforce that waiver here.

A court may compel a party to deliver documents for discovery after the moving party has attempted in good faith to obtain such without court action. Fed. R. Civ. P. 37(a), incorporated by Fed. R. Bankr. P. 7037.

The movant must show that it conferred or attempted to confer in good faith. In order to comply with Fed. R. Civ. P. 37, the movant must accurately and specifically certify with whom, where, how, and when the movant attempted to personally resolve the discovery dispute. *Shuffle Master v. Progressive Games*, 170 F.R.D. 166, 170 (D. Nev. 1996). The movant must also certify that it has, in good faith, conferred or attempted to confer to resolve the discovery dispute without judicial intervention. *Id.* at 171.

The Debtors have complied with the certification document requirements because the declaration and exhibits in support of this motion include the specific details of their attempts at communication with the Creditor. The Debtors have also satisfied the performance requirement by attempting to confer with the Creditor. Thus, the Debtors are entitled to an order compelling document production requests. Creditor shall have until **Thursday, August 10, 2017, by 5:00 p.m.** to provide the Debtors with all document production requests without objection(s), all of which are now waived by the Creditor's failure without justification to timely respond to the Debtors' request.

Finally, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). This remedy, however, is limited only to expenses incurred in making the motion.

The Debtors are seeking a total of $1,000.00 in attorney's fees for the bringing of this motion. The court concludes that the requested fees are reasonable and necessary for the preparation and prosecution of this motion. The court will award attorney's fees totaling $1,000.00. The Creditor shall pay Debtors' counsel no later than **Thursday, August 10, 2017, by 5:00 p.m.**, and shall file certification with the court that payment has been made. The motion is granted.

The court will enter an appropriate minute order.

4. 17-23032-B-13 HALSTEAD TOM — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Robert S. Gimblin — 6-8-17 [13]
Thru #5

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).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 5, 2017. The confirmation hearing for the amended plan is scheduled for August 22, 2017. The earlier plan filed May 3, 2017, is not confirmed.

The court will enter an appropriate minute order.

5. 17-23032-B-13 HALSTEAD TOM — MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
RSG-1 Robert S. Gimblin — 6-12-17 [17]

Final Ruling: No appearance at the August 7, 2017, hearing is required.

Debtor's Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Golden 1 Credit Union. The address used by the Debtor does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. It also does not match the address listed in Claim No. 1-2. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

6. 13-30333-B-13 MICHAEL/SUZANNE FINCH MOTION TO MODIFY PLAN
DEF-4 David Foyil 6-21-17 [71]

Final Ruling: No appearance at the August 7, 2017, hearing is required.

The Motion to Confirm Third Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 21, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

7. 17-22740-B-13 KELLI REYNOLDS — MOTION TO CONFIRM PLAN
SLH-1 Seth L. Hanson — 6-22-17 [17]
Thru #8

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan does not provide treatment for the priority claim filed by the Franchise Tax Board in the amount of $245.27. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes an impermissible expense on Line 41 for voluntary retirement contributions. Voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 547(b)(7) and therefore such income must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012). Without the expense for voluntary retirement contributions, the Debtor's monthly disposable income is $716.60 and the Debtor must pay no less than $43,176.00 to unsecured creditors. The plan pays only $28,858.66 to unsecured creditors.

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

The court will enter an appropriate minute order.

8. 17-22740-B-13 KELLI REYNOLDS — COUNTER MOTION TO DISMISS CASE
SLH-1 Seth L. Hanson — 7-25-17 [31]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

9. 17-24541-B-13 ARTHUR POMPA MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 7-24-17 [11]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) 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 June 23, 2017, due to delinquency in plan payments (case no. 17-21494, dkts. 43, 46). 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 asserts that the previous plan was filed primarily in order to cure pre-petition arrears owed on his primary residence and to retain his vehicle. Debtor states that he was frustrated and confused with his lender when trying to obtain a loan modification and therefore failed to make plan payments. According to the Debtor, his circumstances have changed because he is now aware that he must make plan payments on time. But that's no different from the prior case nor is it a change in circumstances because all debtors are aware, or at least they should be, that they are required in a chapter 13 case to make timely monthly plan payments. In other words, the obligation to make timely monthly plan payments in this case is no different from the obligation to make timely monthly plan payments in the prior case.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied and the automatic stay is not extended.

The court will enter an appropriate minute order.

10. 17-24048-B-13 RANDY/PATRICIA PELFREY — MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
SJD-1 Susan J. Dodds — 7-20-17 [15]

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

The court's decision is to value the secured claim of Golden 1 Credit Union at $16,848.00.

Debtors' motion to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2015 Honda CR-V ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $16,848.00 as of the petition filing date. As the owners, 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 filed by Golden 1 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 December 19, 2014, according to Schedule D, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,361.13. 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 $16,848.00. *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.

11. 17-20658-B-13 EMILY CLARKVIVIER — MOTION TO CONFIRM PLAN
CA-2 Michael David Croddy — 6-23-17 [35]
Thru #12

Tentative Ruling: Debtor's Motion to Confirm Debtor's First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny the motion to confirm and dismiss the case for reasons stated at Item #12.

The amended plan filed June 23, 2017, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

12. 17-20658-B-13 EMILY CLARKVIVIER — OBJECTION TO CONFIRMATION OF PLAN BY FIRST BANK
SBC-2 Michael David Croddy — 7-6-17 [42]

Tentative Ruling: The Objection to Confirmation of First Amended Chapter 13 Plan by Secured Creditor First Bank 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 dismiss the case.

The Debtor's amended plan filed June 23, 2017, does not resolve the issues raised by First Bank in its objection to the Debtor's plan filed January 31, 2017, and which was sustained by the court. *See* dkt. 27. First Bank holds a deed of trust secured by real property located at 5353 Silveyville Road, Dixon, California. The creditor asserts that Debtor and her non-filing spouse are co-obligors of a promissory note in favor of First Bank. Although Debtor's plan states that her non-filing spouse is making payments, First Bank asserts that no payments have been made by either the Debtor or her non-filing spouse for a portion of the payment due September 21, 2016, and each subsequent monthly payment due thereafter. The creditor has filed a timely proof of claim in which it asserts $2,129.23 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Moreover, the court had given the Debtor 75 days to confirm a plan in its order dated April 4, 2017. *See* dkt. 26. The Debtor was required to confirm a plan by June 18, 2017. She did not do so. Although a motion to extend time pursuant to Rule 60(b) was filed, it was filed ***five days after the deadline*** to confirm a plan, no notice of hearing was filed, and no creditors were served. Moreover, the motion does not plead with specificity the grounds for relief under Rule 60(b).

The amended plan filed June 23, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

It is further ordered that the case is dismissed for Debtor's failure to confirm a plan within the 75 day deadline.

The court will enter an appropriate minute order.

13. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS MOTION TO EXTEND AUTOMATIC STAY
GRF-1 Gary Ray Fraley 7-21-17 [8]

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on July 8, 2017, due to Debtors did not confirm a modified plan within 75 days of the date of entry of the order denying confirmation of the plan (case no. 17-20503, dkts. 35, 36). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 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 Debtors assert that their case was filed in order to save their home after Debtor Kevin Lewis lost his job and the Debtors were unable to make mortgage payments. Debtors further state that the dismissal of the prior case was not due to willful inadvertence or negligence on their part but rather due to a calendaring error of the attorney. The Debtors state that they had made plan payments required in their previous bankruptcy and performed every task required of them.

The Debtors have 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.

14. 10-50177-B-13 WILLIE HYDE
TJW-1 Timothy J. Walsh

MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC.
7-19-17 [36]

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

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 Beneficial California, Inc. ("Creditor") against the Debtor's property commonly known as 924 Edwards Circle, Vallejo, California ("Property").

Although the Debtor asserts that judgment was entered against it in favor of Creditor in the amount of $15,927.13 and recorded with the Solano County Recorder on September 2, 2010, no abstract of judgment was filed as an exhibit. Debtor has filed a preliminary title report that purports to show a recorded abstract of judgment. However, that preliminary title report is not authenticated which means, at best, it is inadmissible hearsay.

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.

15. 17-23520-B-13 REV ANDERSON
JPJ-1 Kayla M. Grant

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-13-17 [27]

Final Ruling: No appearance at the August 7, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed May 25, 2017, will be confirmed.

The court will prepare an appropriate minute order.

16. 17-23739-B-13 JUAN CALZADA
JPJ-1 Stephen M. Reynolds

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-11-17 [16]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally 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).

This matter was continued from August 1, 2017, to allow the Chapter 13 Trustee to review the amended schedules filed by the Debtor. The matter will be determined at the scheduled hearing.

17. 17-23766-B-13 JUDITH RANDEL
JPJ-1 Justin K. Kuney
Thru #18

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-11-17 [20]

This matter is removed from calendar. The court overruled the Trustee's objection and denied the conditional motion to dismiss case at the August 1, 2017, hearing. *See* dkt. 29. The only matter that was continued was Bank of America's objection to confirmation. *See* Item #18 below.

18. 17-23766-B-13 JUDITH RANDEL
CJO-1 Justin K. Kuney

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
7-13-17 [23]

Tentative Ruling: The Bank of America, N.A.'s Objection to Confirmation of the Chapter 13 Plan 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 deny confirmation of the plan

This matter was continued from August 1, 2017, to allow the Debtor to review Claim No. 4 that was filed by Bank of America on July 31, 2017. Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $3,957.25 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 2, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.