**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

**October 24, 2017 at 1:00 p.m.**

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1. 17-26708-B-13 LA KEISHA STEWART — MOTION TO BE RELIEVED OF TERMS OF STIPULATED JUDGMENT
RK-1 Richard Kwun — 10-10-17 [8]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Motion to Be Relieved of Terms of Stipulated Judgment 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 deny the motion and dismiss the case.

Debtor seeks relief from the terms of a stipulated judgment filed October 16, 2015 (adv. no. 15-02170, dkt. 9), that barred her from filing a petition under Title 11 for a period of two years from October 16, 2015. The injunctive relief did not apply to any petition filed on or before October 16, 2015. The expiration of the two year period is October 16, 2017, allowing Debtor to file for bankruptcy relief starting October 17, 2017. Debtors most recent bankruptcy was filed on October 16, 2015, and dismissed on July 14, 2017 (case no. 15-28096). This case was filed on October 10, 2017, in violation of the injunction included in the stipulated judgment.

Debtor seeks relief from the terms of the stipulation because her electricity will be shut off on October 11, 2017, unless she pays $3,000.00 to PG&E by October 10, 2017. Debtor asserts that she does not have these funds. Furthermore, she does not want to attempt to negotiate with PG&E because the creditor is also her employer and this may put her job in jeopardy. By relieving Debtor from the terms of the stipulation, she will be able to file for bankruptcy only 7 days earlier from the expiration date in the stipulated judgment.

The motion does not state the basis on which relief is sought, and for that reason alone denial would be appropriate. *See* Fed. R. Bankr. P. 9013.

However, because the Debtor seeks relief from a final judgment entered against her the court will construe the Debtor's motion as one brought under Federal Rule of Civil Procedure 60(b) applicable in this Chapter 13 case by Federal Rule of Bankruptcy Procedure 9024. And for the reasons explained below, the Debtor's motion will be denied.

Relief under Rule 60(b)(1) (mistake, inadvertence, surprise, or excusable neglect), (b)(2) (newly discovered evidence), and (b)(3) (fraud, misrepresentation, or misconduct) is foreclosed by Rule 60(c)(1). Rule 60(c)(1) states that a motion brought under any of those three provisions of Rule 60(b) must be filed no more than one year after entry of the order or judgment from which relief is sought. Fed. R. Civ. P. 60(c)(1); Fed. R. Bankr. P. 9024. Here, the Debtor seeks relief from a judgment entered against her on October 16, 2015. The motion requesting relief from that judgment was filed on October 10, 2017. Therefore, as to Rule 60(b)(1), (b)(2), and (b)(3) the present motion is untimely.

Rule 60(b)(4) is inapplicable because the stipulated judgment is not void. And Rule 60(b)(5) is inapplicable because when the present motion was filed the stipulated judgment entered against the Debtor was not satisfied, released, or discharged.

Rule 60(b)(6) is also inapplicable. Relief under Rule 60(b)(6) may be granted for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. However, relief under Rule 60(b)(6) is limited to errors or actions beyond the party's control. *See Cmty. Dental Serv. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 1996). The Debtor does not meet this standard. The Debtor seeks relief from the stipulated judgment entered against her because she has not paid her $3,000.00 PG&E bill. Payment (or more accurately non-payment) of that bill is a matter entirely within the Debtor's control. In that regard, the court finds no basis for relief under Rule 60(b)(6).

Furthermore, relief under Rule 60(b)(6) is not warranted because the Debtor has not demonstrated any basis for relief from the underlying stipulation on which the judgment barring her from filing a petition for two years is based. Stipulations are binding on the parties. *See Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988); *Gallagher v. Holt*, 2012 WL 3205175, *16 (E.D. Cal. 2012). And in the Ninth Circuit, "[s]tipulations are treated as judicial admissions." *Matter of Christian & Porter Aluminum Co.*, 584 F.2d 326, 334 (9th Cir. 1978); *accord Frank v. Wilbur-Ellis Co. Salaried Employees LTD Plan*, 2008 WL 4370095, *5 (E.D. Cal. 2008); *In re Applin*, 108 B.R. 253, 258 (Bankr. E.D. Cal. 1989). That said, there is authority that a court has discretion to accept or reject a judicial admission. *Applin*, 108 B.R. at 258. Here, however, when the Debtor stipulated to entry of the two-year filing bar and the corresponding judgment entered against her, she admitted to being an abusive bankruptcy filer. *See* Adv. No. 15-02170, Dkts. 1, 7. Given the seriousness of that admission and conduct, the court will not exercise its discretion to relieve the Debtor of her admission and, thus, of the injunctive relief entered against here to which she stipulated.

Therefore, for the foregoing reasons, the Debtor's motion will be denied. And since this Chapter 13 case was filed in violation of the stipulated judgment that barred the Debtor from filing any petition within a two-year period after October 16, 2015, this Chapter 13 case shall be ordered dismissed.

The court will enter an appropriate minute order.

2. 16-22412-B-13 DANIEL/EVE DINEEN MOTION TO MODIFY PLAN
TAG-2 Aubrey L. Jacobsen 9-5-17 [58]

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

The Motion to Confirm First 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 September 5, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

3. 13-20816-B-13 MARTIN WEBER — MOTION REGARDING DISCOVERY
17-2054 FF-1 — 9-19-17 [15]
WEBER V. DEUTSCHE BANK
NATIONAL TRUST COMPANY ET AL

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

Martin J. Weber having filed a Notice of Withdrawal of the Motion Regarding Discovery, the motion is 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.

The court will enter an appropriate minute order.

4. 17-20925-B-13 DANIEL FERRO
JSO-1 Jeffrey S. Ogilvie

OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST COMPANY, CLAIM NUMBER 1
9-21-17 [29]

**Tentative Ruling:** Debtor's Objection to Claim No. 1 of Deutsche Bank National Trust Company, as Certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to sustain the objection but allow Deutsche Bank National Trust Company to file an amended proof of claim and motion for reconsideration.

Daniel Ferro ("Objector") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of $125,382.97. Objector objects to the interest amount of $59,030.05 and fees of $6,534.21 stating that both amounts are unsupported because Creditor has not submitted any documentation to describe how these fees were incurred.

Creditor argues that the Debtor has not provided evidence to the contrary to overcome the presumptive validity of the claim. Creditor states that the Debtor's objection only contains Creditor's proof of claim but no other evidence. Additionally, Creditor argues that the Debtor's objection is not supported by any declaration.

Creditor provides the Declaration of Gina D'Elia to support its asserted interest amount and attorney's fees. Peculiar, however, is that the attorney's fees asserted in the motion and declaration do not correspond with the fees submitted as exhibits. Additionally, the Declaration seems to suggest that the proof of claim is inaccurate - and thus in direct contradiction to Creditor's opposition - because the Declaration states "[a]n amended Proof of Claim is needed in light of the invoice. One has not yet been filed, but will be."

**Discussion**

The starting place is Rule 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). This rule creates an evidentiary presumption of validity for a properly filed proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (9th Cir. BAP 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). Under that standard, the Debtor's objection (particularly in the absence of any supporting declaration) would be overruled because "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." LBR 3007-1(a).

However, in situations in which a proof of claim is not properly filed it is not entitled to a presumption of validity and the burden of proof is on creditor. *In re Santiago*, 404 B.R. 464, 570 (Bankr. S.D. Fla. 2009). In those instances, a Chapter 13 debtor need only object to the proof of claim on a basis provided § 502(b) and, upon the debtor's proper objection, the burden of proof rests with the creditor to establish validity of its claim. *In re Mazyzk*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014); *In re Porter*, 374 B.R. 471, 483 (Bankr. D. Conn. 2007).

In this case, Creditor's proof of claim is not a properly filed proof of claim. It is not a properly filed proof of claim because - according to the Creditor's own evidence - the claim asserted in the proof of claim is not accurate. Creditor's exhibits provide attorney's fees that are inconsistent with those asserted in Creditor's motion and declaration. Creditor's declaration also states that its proof of claim is indeed inaccurate - and thus in direct contradiction to Creditor's opposition. The declaration states "[a]n amended Proof of Claim is needed in light of the invoice. One has not yet been filed, but will be." In short, Creditor's proof of claim is not entitled to a presumption of validity because by Creditor's own admission supported by its own evidence the proof of claim is inaccurate and therefore not a properly filed claim.

Stripped of its presumptive validity, the court construes the Debtor's objection to Creditor's proof of claim as one under § 502(b)(1), *i.e.*, that the claim is unenforceable against the Debtor, and therefore a valid objection. And because Creditor's proof of claim is admittedly inaccurate, the court cannot conclude that the Creditor has carried its burden of proving the validity of its claim.

Therefore, for the foregoing reasons, the Debtor's objection is sustained and Creditor's claim is disallowed. However, disallowance of Creditor's claim is without prejudice to the filing of an amended proof of claim and a motion for reconsideration of the disallowance based on the amended proof of claim within fourteen (14) days of the date on which an order disallowing Creditor's claim entered. *See* 11 U.S.C. § 502(j); Fed. R. Bankr. P. 3008.

The court will enter an appropriate minute order.

5. 17-22740-B-13 KELLI REYNOLDS MOTION TO CONFIRM PLAN
SLH-2 Seth Hanson 9-11-17 [42]

**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 second amended plan.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $225.00, which represents approximately 0.2 plan payments. The delinquency is due to the fact that Debtor failed to make the increased plan payment amount in month five (September 2017) of the plan. 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).

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.

6. 17-25161-B-13 PETER JACOWAY
AP-1 Mark A. Wolff

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
9-14-17 [15]

**Tentative Ruling:** The Objection to Confirmation of 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 matter will be determine at the scheduled hearing.

This matter was continued from October 3, 2017, upon Debtor's counsel's representation that the Debtor and U.S. Bank, N.A. are working on a resolution.

Objecting creditor U.S. Bank, 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 $2,509.52 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).

7. 13-24865-B-13 IAN/PAIGE CASTRO — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 9-19-17 [61]

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan After Confirmation Filed on September 18, 2017, 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.

The plan does not take into account a refund the Trustee sent to the Debtors on May 11, 2017, in the amount of $1,968.00 representing settlement funds the Trustee received from Wells Fargo Bank. Additionally, the Debtors are delinquent to the Trustee in the amount of $1,968.00 under the terms of the modified plan. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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.

8. 17-25366-B-13 RAYMOND CORREA — MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
TBK-2 Taras Kurta — 8-18-17 [15]

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

The Motion to Value Collateral Held by Santander Consumer USA has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Santander Consumer USA at $3,987.00.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Honda Civic LX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,987.00 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. 3 filed by Santander Consumer USA 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 in June 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,530.34 according to Claim No. 3. 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 $3,987.00. *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.

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| 9. | 16-21470-B-13<br>JPJ-1 | RONALD BROOKS<br>Scott D. Shumaker | OBJECTION TO CLAIM OF TRAVIS CREDIT UNION, CLAIM NUMBER 5<br>9-8-17 [32] |

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 5 of Travis Credit Union and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Travis Credit Union ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $26,995.94. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 20, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 15. The Creditor's Proof of Claim was filed August 4, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

10. 17-26573-B-13 FRANCESCA PENROSE MOTION TO EXTEND AUTOMATIC STAY
DPR-1 David P. Ritzinger 10-9-17 [13]

**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 without prejudice.

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 Chapter 7 bankruptcy case was discharged on August 7, 2017. 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 present case was filed in an effort to save her home. The Declaration of Francesca Penrose states that she fell behind on mortgage payments and her income taxes after the conclusion of her Chapter 7 bankruptcy due to a gambling problem. Debtor contends that she has stopped gambling and has saved $36,000.00 with the hope that she can obtain a loan modification and pay off her IRS debt. Debtor states that she has only one mortgage on her residence and that there exists no other secured debt. Debtor further contends there have been no changes in her financial condition since she filed her Chapter 13 petition.

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. Although the Debtor appears to be pursuing bankruptcy protection and relief honestly, the court is not persuaded that her circumstances have changed so that the present plan is more likely to succeed. In both the Chapter 7 bankruptcy and this Chapter 13 bankruptcy, Debtor was and remains employed by Kaiser Permanente Vacaville Medical Center and did and continues to earn stable income. The only change that has been made, according to Debtor's declaration, is that she has stopped gambling. However, Debtor has provided no evidence that her gambling problem, which caused her to fall behind on mortgage payments and income taxes, is cured or even under current treatment. The motion is denied without prejudice.

The court will enter an appropriate minute order.

11. 17-25575-B-13 ORACIO QUEZADA
BJD-1 Mark A. Wolff

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
9-22-17 [26]

**Tentative Ruling:** The Motion for Order Confirming that the Automatic Stay Has Terminated Under 11 U.S.C. § 362(c) has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to confirm termination of stay.

American Honda Finance Corporation ("Movant") seeks an order confirming that the automatic stay is not in effect with respect to the Debtor 30 days after the second petition was filed on August 23, 2017. *See* 11 U.S.C. § 362(c)(3)(A). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 21, 2017, due to delinquency in plan payments (case no. 16-24432, dkts. 111, 120).

The Debtor filed a response stating that it does not oppose the entry of an order stating that the automatic stay is terminated as to the Debtor, but not as to property of the estate.

Movant filed a response asserting that it seeks an order confirming that the automatic stay has terminated as to the Debtor, the Debtor's estate, and the bankruptcy estate. To support its contention, Movant cites to *In re Reswick*, 446 B.R. 363 (9th Cir. BAP 2011) in which the court held that § 362(c)(3)(A) "terminates the automatic stay in its entirety on the thirtieth day after the petition date" when a debtor has had a previous case dismissed within the prior year. *Id.* at 373.

**Discussion**

Section 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under Chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay expires on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest (not just the debtor) to file a motion requesting the continuation of the stay.

On July 7, 2016, the Debtor filed a Chapter 13 case (case no. 16-24432). That case was dismissed on August 21, 2016, pursuant to the Chapter 13 trustee's motion.

The Debtor filed the instant case on August 23, 2017. Hence, the prior Chapter 13 case was pending within one year of the filing of this case.

The court has reviewed the docket for this case and no motion for seeking the continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) has been filed and granted. Therefore, by September 22, 2017, the automatic stay had expired as a matter of law. *See* 11 U.S.C. § 362(c)(3)(A); *see also Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates in its entirety on the 30th day after the second petition date).

The court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on September 22, 2017, 30 days after the Debtor filed the present case. *See* 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

The Debtor suggests that this court should not follow *Reswick* and conclude that the automatic stay expired only as to the Debtor and the Debtor's property, but not as to the estate's interest in the subject property. The court rejects the Debtor's invitation to not follow *Reswick*.

The Bankruptcy Appellate Panel continues to adhere to *Reswick*, recognizing that the stay terminates as to it entirety under § 362(c)(3)(A). *See Aguilar v. Ocwen Loan Servicing, LLC (In re Aguilar)*, 2014 WL 6981285, *5-6 (9th Cir. BAP 2014); *Ortola v. Ortola (In re Ortola)*, 2011 WL 7145793 (9th Cir. BAP 2011). This court does not take the BAP's opinions lightly. *See State Compensation Ins. Fund v. Hoffmeier (In re Silverman)*, 616 F.3d 1001, 1005 (9th Cir. 2010).

*Reswick* is also followed by at least two district courts in the Ninth Circuit, including our own. *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509-510 (N.D. Cal. 2016); *Vassallo v. Naiman*, 2012 WL 691783, *2 (E.D. Cal. 2012).

Most bankruptcy courts within the Ninth Circuit also follow *Reswick* in determining that § 362(c)(3)(A) terminates the automatic stay in its entirety. *In re Bishop*, 2017 WL 1788412, *1 (Bankr. C.D. Cal. 2017); *In re Wilson*, 2016 WL 3751620, *3 n.6 (Bankr. E.D. Wa. 2016); *In re Whitescorn*, 2013 WL 1121393, *2 (Bankr. D. Ore. 2013); *In re Smith*, 481 B.R. 633, 636 n.4 (Bankr. D. Nev. 2012); *In re Jackola*, 2011 WL 2518930, *3 (Bankr. D. Haw. 2011).

The court is aware of two bankruptcy courts within the Ninth Circuit that have declined to follow *Reswick*. *See In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011); *In re Alvarez*, 432 B.R. 839, 842-843 (Bankr. S.D. Cal. 2010). Neither are persuasive. *Rinard* has not been cited favorably on the *Reswick* issue by any court in the Ninth Circuit. In fact, the district court for the Northern District of California recently rejected it. *Vitalich*, 569 B.R. at 507-508. And it also was not followed by a different judge from the very court from which it originated. *See Bishop*, 2017 WL 1788412 at *1. *Alvarez* pre-dates *Reswick* and it, too, has not been cited by any other court in the Ninth Circuit.

In short, unless and until the Ninth Circuit says otherwise, this court adopts and will follow *Reswick*. And in that regard, the court holds that when the automatic stay terminates under § 362(c)(3)(A) it terminates in its entirety.

American Honda Finance Corporation's motion to confirm termination of stay is granted.

The court will enter an appropriate minute order.

12. 17-23779-B-13 BLG-1 — MARIA CRISTINA CRUZ GALLEGOS — Chad M. Johnson — MOTION TO CONFIRM PLAN — 9-6-17 [24]

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

The Motion to Confirm First Amended Plan Filed on 9/6/17 has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 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). 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 will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on September 6, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

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| 13. | 16-28390-B-13<br>JPJ-1 | SASHA CORTTI-JACKSON<br>Michael Benavides | OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, LLC/DEPARTMENT OF EDUCATION, CLAIM NUMBER 10<br>9-8-17 [29] |

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 10 of Navient Solutions, LLC/Department of Education and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, LLC/Department of Education ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $46,437.90. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was May 3, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 19. The Creditor's Proof of Claim was filed June 29, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

14. 17-25899-B-13 CARLOS/ROBIN ROBLES
CYB-1 Candace Y. Brooks
**Thru #15**

CONTINUED MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK
9-14-17 [12]

**Tentative Ruling:** This matter was continued from October 3, 2017, to provide the Debtors additional time to properly serve respondent creditor.

Because less than 28 days' notice of the hearing was given (*see* dkt. 53, dated October 5, 2017), the Motion to Value Collateral of Synchrony Bank 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 Synchrony Bank at $500.00.

Debtors' motion to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a bed ("Asset"). The Debtors seek to value the Asset at a replacement value of $500.00 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).

Debtors state that the total amount of debt on the Asset is $4,591.00. The first lien held by Creditor is in the amount of $1,656.00. A second lien held by the same Creditor is in the amount of $2,935.00. Two loans were taken against the Asset because Co-Debtor alone did not qualify for the entire amount of the loan for the bed, and a second loan was taken out by Debtor against the Asset.

**No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

**Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with Synchrony Bank, in first position, is $1,656.00 as stated in the Debtors' declaration. Debtors assert that the Asset has been used since 2015, that it is in fair to good condition, that it has sustained damage from animal bites and catching the bed, and that the price a retail merchant would charge for the Asset is $500.00. Therefore, the Creditor's claim secured by a first lien on the Asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $500.00. *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.

15. 17-25899-B-13 CYB-2 — CARLOS/ROBIN ROBLES, Candace Y. Brooks — CONTINUED MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK 9-15-17 [22]

**Tentative Ruling:** This matter was continued from October 3, 2017, to provide the Debtors additional time to properly serve respondent creditor.

Because less than 28 days' notice of the hearing was originally given (*see* dkt. 55, dated October 5, 2017), the Motion to Value Collateral of Synchrony Bank 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 Synchrony Bank at $0.00.

Debtors' motion to value the secured claim of Synchrony Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a bed ("Asset"). The Debtors seek to value the Asset at a replacement value of $500.00 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).

Debtors state that the total amount of debt on the Asset is $4,591.00. The first lien held by Creditor is in the amount of $1,656.00. A second lien held by the same Creditor is in the amount of $2,935.00. Two loans were taken against the Asset because Co-Debtor alone did not qualify for the entire amount of the loan for the bed, and a second loan was taken out by Debtor against the Asset.

**No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

**Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with Synchrony Bank, in second position, is $2,935.00 as stated in the Debtors' declaration. Debtors assert that the Asset has been used since 2015, that it is in fair to good condition, that it has sustained damage from animal bites and catching the bed, and that the price a retail merchant would charge for the Asset is $500.00. Therefore, the Creditor's claim secured by a second lien on the Asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00. *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.

16. 17-25301-B-13 TILLI RASHAD WILLIAMS
Aubrey L. Jacobsen

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
9-28-17 [18]

**Final Ruling:** No appearance at the October 24, 2017, hearing is required.

Nationstar Mortgage, LLC having filed a Notice of Withdrawal of its Objection to Confirmation of the Chapter 13 Plan, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) 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 August 10, 2017, will be confirmed.

The court will enter an appropriate minute order.

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| 17. | 17-20354-B-13<br>PGM-1 | JUAN LOPEZ AND ROSALINA MARTINEZ-MACIEL<br>Peter G. Macaluso | CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES<br>8-10-17 [22] |

**Tentative Ruling:** Debtors' Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Champion Mortgage Company Filed July 12, 2017, has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

This matter was continued from October 17, 2017. The court decided at that hearing to sustain the objection to charges filed by Champion Mortgage Company, strike references to Cal. Civ. Code § 2941, and deny without prejudice Debtor's request for attorney's fees pursuant to Cal. Civ. Code § 1717. The matter was continued to today's hearing date for the sole purpose of considering the award of attorney's fees to the Debtor.

The matter will be determined at the scheduled hearing.

18. 17-25366-B-13 RAYMOND CORREA — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Taras Kurta — 9-27-17 [29]

**Tentative Ruling:** The Trustee'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). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan

Feasibility of the plan depends on the granting of a motion to value collateral for Santander Consumer USA. That motion was granted at Item #8.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 18, 2017, is confirmed.

The court will enter an appropriate minute order.

19. 17-25780-B-13 BRIAN JUMAWAN
RCO-33 Mikalah Liviakis

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
9-18-17 [14]

WELLS FARGO BANK, N.A. VS.
DEBTOR DISMISSED: 09/18/2017

**Final Ruling**: No appearance at the October 24, 2017, hearing is required.

The Motion for Relief From the Automatic Stay and Seeking Extraordinary Relief Pursuant to 11 U.S.C. § 362(d)(4); Co-Debtor Relief has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 in part and grant in part the motion for relief from stay.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 7678 Polo Crosse Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Peggy Morrow to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The pleadings state that the Debtor is pasty due on $236,608.63 payments as of September 13, 2017. Movant caused two Notices of Trustee Sale to be recorded and the sale date to be set from January 2016 through August 2017. However, during that time the Debtor filed for bankruptcy relief three times, preventing the Trustee's Sale to proceed.

Additionally, Movant seeks relief to terminate the stay for cause pursuant to 11 U.S.C. § 362(d)(4) because Debtor engaged in a scheme to delay, hinder, and defraud creditors by filing multiple bankruptcy petitions.

**Discussion**

Since this case was dismissed on September 18, 2017, there is no stay in effect pursuant to 11 U.S.C. § 362. Therefore, the motion to terminate the stay as to the Debtor and Debtor's bankruptcy estate is denied as moot.

However, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor has filed bankruptcy a total of three times in an effort to thwart Movant from foreclosing on the Property. In each of the three prior bankruptcies, Debtor's case was dismissed for failure to file necessary schedules and other related documents. In two of the prior bankruptcies, Movant was prevented from moving forward with two Trustee's Sales scheduled for June 16, 2016, and September 5, 2017.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

20. 17-26564-B-13 WESLEY/LAURIE PAMPLONA — MOTION TO EXTEND AUTOMATIC STAY
FF-1 Gary Ray Fraley — O.S.T.
10-17-17 [13]

**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.

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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on August 8, 2017, for failure to make plan payments (case no. 15-25062, dkt. 42, 43). 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 the present case is filed in an effort to save their home. Debtors state that the previous plan failed because Debtor lost his job, causing the Debtors to default on plan payments. However, Debtors contend that their circumstances have changed because Debtor is now employed as reflected in Schedule I and that they can afford plan payments. Debtors further state that extending the automatic stay is crucial otherwise it will terminate even before the Debtors have had their meeting of creditors.

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.