

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: December 6, 2022

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 6, 2022 at 1:00 p.m.

1. [21-20402](#)-B-13 ALFONSO PULIDO MOTION TO MODIFY PLAN
[PGM](#)-4 Peter G. Macaluso 10-28-22 [[81](#)]

Final Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

December 6, 2022 at 1:00 p.m.

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2. [22-22415](#)-B-13 TIMOTHY WILSON OBJECTION TO CONFIRMATION OF
GB-2 Pro Se PLAN BY UMPQUA BANK
Thru #3 11-17-22 [[23](#)]

Final Ruling

The objection 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). 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.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan for reasons stated at RDG-1.

The plan filed October 4, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [22-22415](#)-B-13 TIMOTHY WILSON OBJECTION TO CONFIRMATION OF
[RDG-1](#) Pro Se PLAN BY RUSSELL D. GREER
11-15-22 [[19](#)]

Final Ruling

The objection 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). 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.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor failed to provide evidence of his current income pursuant to Federal Rules of Bankruptcy Procedure 4002(b)(2)(A).

Second, Debtor's plan fails to comply with 11 U.S.C. § 1325(b)(1)(B) since there is sufficient disposable income based on his schedules to pay general unsecured creditors a 100% dividend. However, Debtor's plan provides for 0% distribution to general unsecured creditors.

Third, Debtor's plan classifies Umpqua Bank for the real property at 6030 Shaeffer Ranch Road as a Class 1 claim with pre-petition arrears of \$25,550.00 to be paid at 0% interest, a monthly dividend of \$425.83, and \$0 in post-petition monthly payments.

Without providing a monthly post-petition contractual amount to pay that claim, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fourth, Creditor Umpqua Bank has filed a proof of claim listing a secured portion of \$1,100,000.00 (Claim 4-1) and a total amount due of \$1,430,811.23. The claim indicates that the loan has matured, and accordingly the classification as Class 1 is not appropriate. Debtor's plan is not feasible as filed. 11 U.S.C. § 1325(a)(6).

Fifth, amended schedules are required. Debtor's petition fails to include Debtor's prior chapter 12 filing (case no. 15-25059) filed on June 24, 2015, his schedules fail to list a truck, and his schedules fail to include additional secured and tax creditors. At this time, it cannot be determined whether the plan is feasible and passes the liquidation test. 11 U.S.C. § 1325(a)(6), (a)(4). The plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

The plan filed October 4, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was not filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to value the secured claim of Franchise Tax Board at \$0.00.

Debtors move to value the secured claim of Franchise Tax Board ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtors are the owners of the subject real property commonly known as 846 William Moss Boulevard, Stockton, California ("Property"). Debtors seek to value the Property at a fair market value of \$140,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some 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. 6-1 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately \$439,800.00 and a superior lien held by the Internal Revenue Service is in the amount of \$12,935.00. Creditor's Claim No. 6-1 lists its claim amount as \$25,568.86 and states that the claim is secured by all property whether real or personal, tangible or intangible, including all after-acquired property and rights to property belonging to Debtors. However, because Debtors' plan did not provide for Creditor's secured claim, Creditor stated it filed an unsecured claim without waiving its lien rights.

Given the superior liens against the Property, Creditor's claim is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [22-22041](#)-B-13 GERALDINE OSEI
[RDG-1](#) Keith R. Wood

OBJECTION TO CLAIM OF QUANTUM3
GROUP LLC AS AGENT FOR CF
MEDICAL LLC, CLAIM NUMBER 4
11-2-22 [[30](#)]

Final Ruling

The objection 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, parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally sustain the objection to Claim No. 4-1 of Quantum3 Group LLC and continue the matter to December 13, 2022, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Quantum3 Group LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$167.28. The Trustee 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 October 25, 2022. The Creditor's claim was filed October 28, 2022.

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 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 conditionally sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, December 9, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on December 13, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on December 13, 2022, at 1:00 p.m.

6. [22-22049](#)-B-13 MELISSA BICE
[JCK](#)-2 Kathleen H. Crist

OBJECTION TO CLAIM OF U.S. BANK
TRUST NATIONAL ASSOCIATION,
CLAIM NUMBER 2
10-24-22 [[18](#)]

Final Ruling

No appearance at the December 6, 2022, hearing is required. The matter will be set for an evidentiary hearing on **February 27, 2023 at 10:00 a.m.**

The court will issue an order setting evidentiary hearing.

7. [22-21557](#)-B-13 MARINA GALINDO CONTINUED OBJECTION TO CLAIM OF
[GEL](#)-2 Gabriel E. Liberman STOCKTON MORTGAGE, CLAIM NUMBER
Thru #8 6
CASE DISMISSED: 11/29/22 10-7-22 [[64](#)]

Final Ruling

The case having been dismissed on November 29, 2022, the objection to claim is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

8. [22-21557](#)-B-13 MARINA GALINDO CONTINUED MOTION TO CONFIRM
[GEL](#)-3 Gabriel E. Liberman PLAN
CASE DISMISSED: 11/29/22 10-11-22 [[72](#)]

Final Ruling

The case having been dismissed on November 29, 2022, the motion to confirm plan is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

9. [22-21274](#)-B-13 PATERNO LIM
[ES-2](#) Eric L. Seyvertsen

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
10-6-22 [[37](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection 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 objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers, particularly since it appears that the order which the Debtors move to vacate should not have been entered in the first instance and allowing the order to remain of record will result in irreparable harm to the Debtors.

The court's decision is to grant the motion to vacate the order granting relief from automatic stay, ASW-2.¹

Debtors move to alter or amend the court's judgment under Fed. R. Civ. P. 59(e) applicable by Bankruptcy Rule 9023. Creditor Deutsche Bank National Trust Company ("Creditor") filed a motion for relief from automatic stay as to real property located at 3443 Phelps Street, Stockton, California. The court had continued the original hearing date at the Debtors' request to allow their payment to be processed, thereby mooted Creditor's motion, and required Creditor to withdraw its motion if the default was cured. The Creditor did not withdraw its motion by the continued hearing date and the motion for relief from stay was granted.

Discussion

Filed less than 14 days after the entry of judgment, the Debtors' motion is governed by Civil Rule 59(e) applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The third ground is applicable. The court had entered an order granting the motion for relief from stay since the Creditor did not withdraw its motion in the event that the debt was cured. Debtors and the Chapter 13 Trustee have provided evidence that the Debtors did, in fact, cure the default with the Creditor and that the Debtors are current with post-petition payments through October 2022. Debtors' counsel contacted Creditor by email and phone concerning the matter, but the Creditor has not responded to the multiple emails and calls. The Debtors have only 12 months remaining to complete their plan so granting relief from the automatic stay when it apparently is not warranted would be a manifest injustice to the Debtors.

¹Creditor is, of course, free to seek reconsideration of this decision. However, if it does, Creditor should bear in mind that, in reality, it appears its motion should never have been granted in the first instance. Therefore, should Creditor elect to move for reconsideration of this decision, and if it turns out that the Debtors were in fact current with payments when relief was erroneously granted, Creditor and its attorneys should be prepared to address the issue of sanctions under Fed. R. Bankr. P. 9011 and the court's inherent authority. Creditor and its attorneys should also be prepared to address their failure to comply with the court's instructions to withdraw their motion if the Debtors were current as well as sanctions for their apparent noncompliance with those instructions.

In conclusion, the Debtors have demonstrated that extraordinary relief under Civil Rule 59(e) is warranted.

The order granting relief from the automatic stay, dkt. 96, will be VACATED, Creditor's motion for relief from the automatic stay, dkt. 82 [DCN, ASW-2] shall be DENIED WITHOUT PREJUDICE, and the civil minutes at dkt. 95 shall be AMENDED accordingly.

Further, by vacating the order that terminated the automatic stay the automatic stay is reimposed as to all parties for all purposes. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); see also *Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring).

The motion is ORDERED GRANTED for the reasons and to the extent stated in the minutes.

The court will issue an order.

11. [22-22398](#)-B-13 GREGORIO DASALLA
[RDG](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-16-22 [[23](#)]

Final Ruling

The objection 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). 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.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtor is not contributing all of his net income into the plan. Debtor's plan payment is \$2,000.00 per month but Schedule J shows that Debtor has a net income of \$2,382.45. Therefore, Debtor's plan is not his best effort. 11 U.S.C. § 1325(b).

Second, the plan does not provide for the increased \$837.00 in disposable income after Debtor pays off his vehicle in December 2022 as testified at his meeting of creditors. Therefore, Debtor's plan is not his best effort. 11 U.S.C. § 1325(b).

Third, the claim of Americredit Financial Services, Inc. dba GM Financial (Claim 1-1) should be classified as a Class 2 claim in Debtor's plan because the secured claim matures during the life of the plan.

Fourth, Debtor's Disclosure of Compensation of Attorney for Debtor and Rights and Responsibilities indicate fees for services of \$4,000.00, of which \$851.00 was paid prepetition and \$3,149.00 is due through the plan. However, Debtor's plan states that \$4,000.00 shall be paid through the plan. The plan cannot be administered with these inconsistencies. Debtor's plan is not feasible. 11 U.S.C. §1325(a)(6).

The plan filed September 22, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 6, 2022, for failure to make plan payments (case no. 17-26777, dkt. 98). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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). This court does not utilize the *Sarafoglou* factors as urged by the Debtor. See *In Re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006).

The Debtor asserts that the prior case was dismissed because she experienced a loss in Social Security income after her daughter reached the age of maturity and Social Security checks ceased being issued to the Debtor and were thereafter issued to her daughter. Debtor states her circumstances have changed because the Social Security checks are now being issued back to the Debtor. Debtor is refiling for bankruptcy in order to retrieve her vehicle that was repossessed and to pay off her debt. Debtor's current gross monthly income from Social Security is \$1,166.00 and she asserts that she can afford the proposed plan payments.

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

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

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.