

**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

DAY: TUESDAY

DATE: December 18, 2018

CALENDAR: 1:00 P.M. CHAPTER 13

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND
SUBMISSION PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE
SEPTEMBER 3, 2018.**

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 18, 2018 at 1:00 p.m.

1. [18-23710](#)-B-13 DAVID/EMILINDA VERA MOTION TO DISMISS CASE
 [JPJ](#)-2 Julius J. Cherry 12-4-18 [[67](#)]

No Ruling

2. [16-25614](#)-B-13 BEVERLY BAKER HARRIS MOTION TO DISMISS CASE
[JPJ](#)-3 Scott J. Sagaria 11-19-18 [[111](#)]

No Ruling

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, parties in interest were not required to file a written response or opposition. 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 conditionally extend automatic stay and continue the hearing on this motion to the plan confirmation hearing date of February 5, 2019.

Debtor's Motion to Extend the Stay

Debtor Francine Mitchell ("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 September 7, 2018, due to delinquent plan payments. Case no. 17-26547, dkt. 40 Notice of Entry of Dismissal. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Debtor asserts that she contacted a lender for a reverse mortgage on her home loan. She thought that she would obtain a loan for a sufficient amount to pay off her Chapter 13 plan, and in anticipation of receiving the reverse mortgage "I stopped making my Chapter 13 plan payments. Although in hindsight I realize I should not have done that, I had gotten assurances that the reverse mortgage would, in fact, go through." Dkt. 10, at 2:9-12. The reverse mortgage offered did not provide enough to pay off the Chapter 13 plan, and at that point Jan Johnson, the Chapter 13 Trustee ("Trustee"), had already filed a Notice of Default and Application to Dismiss Case. Debtor states she was too far behind to cure the defaults, and the case was dismissed. *Id.* at ln. 12-16. Debtor claims that she refiled to "protect [her] home," which is "very affordable for [her]." *Id.* at lns. 17-18. Debtor also points out that she has had the same employer for three years, which provides "steady and stable income." *Id.* at lns. 19-20.

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 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).

Debtor stated, under penalty of perjury, that she unilaterally terminated her payments under the confirmed Chapter 13 plan. Further, a review of the docket from the prior case shows that no modified plan was proposed to cure the delinquency after the Chapter 13 Trustee filed a Notice of Default on July 27, 2018, despite the request for dismissal not being filed until 41 days later on September 6, 2018. Case no. 17-26547, dkt. 33, 38. Nevertheless, the court will conditionally extend the § 362(a) automatic stay for all purposes and as to all parties and parties in interest through the plan confirmation hearing date of February 5, 2019. *See* 11 U.S.C. § 362(c)(3)(B). If the Debtor demonstrates a serious intent to save her home, is current on her plan payments,

and her plan appears confirmable the court will consider a further extension of the automatic stay at that time. Otherwise, if the Debtor is in default of her plan payments and her plan appears to be not confirmable the stay may not be further extended.

THE COURT WILL PREPARE A MINUTE ORDER.

4. [18-23532](#)-B-13 MELODY SIMPSON
[JPJ](#)-2 W. Steven Shumway

CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 7 AND/OR MOTION
TO DISMISS CASE
9-7-18 [[23](#)]

No Ruling

5. [18-24433](#)-B-13 THEODORE/LORI RAMIREZ
[JJC](#)-1 Julius J. Cherry
Thru #6

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO BANK,
N.A.
9-5-18 [[21](#)]

Final Ruling

The motion was originally set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The court continued this matter from the scheduled hearing on October 23, 2018, to allow time for service on Wells Fargo Bank, N.A. pursuant to Federal Rule of Bankruptcy Procedure 7004(h). Dkt. 33. Debtor filed a proof of service stating that service was complete on October 26, 2018. Dkt. 36. The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the continued 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).

The court issues this as a "Final" rather than a "Tentative" Ruling. This motion to value was filed over three months ago and, at the Debtors' request, has been continued a number of times. As noted below, the last request for a continuance was to permit the filing of additional evidence regarding the Vehicle's value. The Debtors did not avail themselves of that opportunity (and many others). Further argument will therefore not assist the court in the resolution of this motion. See LBR 9014-1(h).

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at \$9,105.46.

Debtors' Motion to Value

Debtors Theodore and Lori Ramirez ("Debtors") filed the motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor"), which is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Hyundai Sonata VIN 5NPEB4AC9DH617163 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$3,416.00 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).

Here, Debtors do not argue that the Vehicle is collateral outside the scope of the hanging paragraph. Instead, Debtors argue that only a portion of Creditor's claim, secured by the Vehicle, is unprotected by the hanging paragraph because it resulted from financing for the following items:

Description	Amount
Creditor's Claim	\$5,500.00
Extended Warranty	(\$1,489.00)
GAP Insurance	(\$595.00)
Purchase Money Secured Interest of Creditor's Claim	\$3,416.00

Dkt. 24, ¶¶ 6-7.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 11, filed by Creditor on September 21, 2018, is the claim which may be the subject of the present motion.

November 13, 2018 Hearing

At the hearing, Mr. Lucas Garcia specially appeared as counsel for Debtors and requested that the matter be continued to file supplemental evidence of the Vehicle's value. Dkt. 37. The court continued the matter to allow Debtors to file any additional evidence by December 11, 2018. A review of the court's docket shows that no supplemental brief or evidence was filed by the deadline, no objection to Proof of Claim No. 11 was filed, and Proof of Claim No. 11 has not been amended by Creditor.

Discussion

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph). However, the lien on the Vehicle's title secures a purchase-money loan incurred January 1, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,105.46. POC 11, pp. 1, 9.

In addition, a proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with the rules. FED. R. BANKR. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. See *Litton*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

Proof of Claim No. 11 filed by Creditor states a balance owed of \$9,105.46 and a value of the Vehicle at \$9,275.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at \$9,275.00 based on Proof of Claim No. 11.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER

6. [18-24433](#)-B-13 THEODORE/LORI RAMIREZ CONTINUED OBJECTION TO
[JPJ](#)-1 Julius J. Cherry CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-23-18 [[18](#)]

Final Ruling (for the same reason stated in Item No. 5)

This matter was continued from October 23, 2018, to be heard concurrently with the continued motion to value Wells Fargo Bank, N.A.'s claim. Dkt. 33. The objection and motion were properly filed at least 14 days prior to the original hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Trustee's Objection and Motion to Dismiss

Jan Johnson, the Chapter 13 Trustee ("Trustee"), filed an objection to plan confirmation and motion to dismiss on August 23, 2018. Dkt. 18.

First, feasibility of the plan depended on the granting of a motion to value collateral of Wells Fargo Bank, N.A. Theodore and Lori Ramirez, the debtors ("Debtors"), had not filed, served, or set for hearing a valuation motion pursuant to Local Bankruptcy Rule 3015-1(j).

Second, Debtors had not filed signed declarations from all family members stating their willingness and ability to contribute during the life of the plan as requested by the Trustee. See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2017). The Debtors had not complied with 11 U.S.C. § 521(a)(3).

Debtors' Opposition

Debtors filed an opposition on September 10, 2018. Dkt. 27.

Debtors argued that the motion to value collateral for Wells Fargo Bank, N.A. was filed on September 5, 2018. The hearing on this item is October 23, 2018. Dkts. 21, 22.

In addition, Debtors stated that they subsequently delivered to Trustee statements from all individuals who will contribute to the plan identified on Schedule I, Line 11. Dkt. 28, exh. 1.

September 11, 2018 Hearing

This matter was continued to October 23, 2018, to allow for proper service and to be heard concurrently with Debtors' motion to value.

November 13, 2018 Hearing

At the hearing, Mr. Lucas Garcia specially appeared as counsel for Debtors and requested that the matter be continued to be heard concurrently with the motion to value and allow Debtors more time to file supplemental evidence of the Vehicle's value. Dkt. 37. The court continued the matter to allow Debtors to file supplemental evidence by December 11, 2018. A review of the court's docket shows that no supplemental brief or evidence was filed, no objection to proof of claim was filed, and Creditor did not amend its proof of claim.

Discussion

Based on Debtors' representations, and the resolution of Debtors' motion to value at line item no. 5, Trustee's objections have been resolved. No other objections were filed; however, the plan is now not feasible in light of the increased valuation in item no. 5. See 11 U.S.C. § 1325(a)(6).

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7. [18-25840](#)-B-13 SHAVINA THOMAS
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-21-18 [[31](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting debtor Shavina Thomas ("Debtor") to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on November 16, 2018. Dkt. 31. While the delinquent installment was paid on December 5, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

8. [18-26641](#)-B-13 VASILIOS/SOFIA TSIGARIS ORDER TO SHOW CAUSE - FAILURE
 Marc A. Caraska TO PAY FEES
 11-27-18 [[15](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting debtors Vasilios and Sofia Tsigaris ("Debtors") to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on November 26, 2018. Dkt. 15. While the delinquent installment was paid on November 30, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

9. [18-25646](#)-B-13 THADDEUS/ANGELA FRIDAY
Candace Y. Brooks

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-14-18 [[24](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting debtors Thaddeus and Angela Friday ("Debtors") to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$77.00 installment when due on November 5, 2018. Dkt. 24. While the delinquent installment was paid on November 20, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

10. [18-26052](#)-B-13 SHERWIN BRAMLETT
[JPJ](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE
11-28-18 [[21](#)]

No Ruling

11. [18-26452](#)-B-13 DAVID CASTILLO
[JPJ](#)-1 Justin K. Kuney

MOTION TO DISMISS CASE
11-30-18 [[16](#)]

Final Ruling

The court's decision is to deny without prejudice the motion to dismiss, as the case was converted to one under Chapter 7 on December 12, 2018. Dkts. 31, 34.

THE COURT WILL PREPARE A MINUTE ORDER.

12. [18-26564](#)-B-13 DESMAL MATTHEWS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-26-18 [[20](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting debtor Desmal Matthews ("Debtor") to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on November 19, 2018. Dkt. 20. While the delinquent installment was paid on December 14, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

13. [15-23192](#)-B-13 AMELITO CRUZ AND ROSE MOTION TO MODIFY PLAN
[WMP](#)-1 MULLEN 11-28-18 [[37](#)]
William M. Rubendall

Tentative Ruling

The motion 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 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny the motion to confirm as moot.

Subsequent to the opposition filed by Jan Johnson, the Chapter 13 trustee ("Trustee"), debtors Amelito Cruz and Rose Mullen ("Debtors") filed a Second Modified Plan on December 7, 2018. Dkt. 45. The confirmation hearing for the Second Modified Plan is scheduled for January 15, 2018. Dkt. 46. The First Modified Plan filed November 28, 2018, is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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, parties in interest were not required to file a written response or opposition. 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 extend automatic stay.

Debtor Anthony Sippio ("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 August 26, 2018, due to Debtor's failure to propose a confirmable plan after three separate extensions on the confirmation deadline. Case no. 17-27707, dkts. 103, 104. 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.

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 (1) a debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse, or (2) 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. § 362(c)(3)(C)(i)(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).

Prior Bankruptcies

As an initial matter, the court notes that this is Debtor's fourth bankruptcy in the past four years, with three petitions filed in less than two years. The three prior cases were dismissed for the following reasons:

Case Number	Petition Filing Date	Date Dismissed	Reason for Dismissal	Docket Citations
15-26854	August 31, 2015	April 20, 2017	Debtor's ex parte motion pursuant to 11 U.S.C. § 1307(b). This was filed after Trustee's motion to dismiss when Debtor became delinquent.	111, 115
17-24007	June 15, 2017	September 7, 2017	Trustee's motion to dismiss after Debtor became delinquent.	56, 58

17-27707	November 24, 2017	August 26, 2018	Debtor became delinquent and failed to file a confirmable plan, despite three confirmation deadline extensions.	100, 103
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Debtor's Declaration

Debtor asserts that the previous plan failed because he had a recurrence of his congestive heart failure, and he was not paid for time off because he already exhausted his vacation and sick pay. Debtor believes he is mostly stable now, and wants to preserve his family residence and marriage. Dkt. 10, ¶¶ 4, 5.

November 13, 2018 Hearing

At the hearing, counsel for Debtor requested that the court continue this matter to allow him to submit further evidence of changed financial or personal circumstances. The court continued this matter and set a deadline of December 11, 2018 to submit supplemental briefs and evidence.

Debtor's Supplemental Brief

Debtor filed a Supplemental Motion, a Supplemental Declaration, and Supplemental Exhibits on December 11, 2018. Dkts. 18-20.

Debtor states, under penalty of perjury, that as of October he is "5 pay days (10 weeks or 2.5 months) from being back to earning positive sick leave, but more important I believe I am in better health than I have been in year and am sickening [sic] to my doctors [sic] recommended activities and diet to regain my health." Dkt. 20, ¶ 5(d). Debtor submitted a copy of his October 23, 2018 pay stub that supports his statements that he will accrue annual and sick leave by December 2018. Dkt. 19, exh. 2.

In addition, Debtor submitted an email chain with another individual named "Vu Duy Ta." Dkt. 19, exh. 1. While no evidence was presented to qualify this individual as an expert as required by Federal Rule of Evidence 702, and despite another individual named "Mohammad Asif Arshad" being listed as Debtor's primary care physician, this email chain does provide lay witness testimony that Debtor sought medical treatment and has changed his habits to remain healthier. *Id.*

Discussion

Debtor has presented sufficient evidence to rebut the presumption of bad faith based on his changed personal and financial circumstances. On these grounds, the motion is granted and the automatic stay is extended for all purposes and parties.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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

Trustee's Motion to Dismiss

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed a motion to dismiss the case filed by debtors Steven and Sharon Collins ("Debtors").

First, Trustee argues Debtors are delinquent approximately 2 plan payments, or \$8,400.00. Trustee also notes that Debtors never commenced plan payments after the petition was filed.

Second, Trustee asserts that Debtors did not file their 2015 federal tax return nor their 2014-2017 state tax returns, as shown on the filed proofs of claim and as Debtors testified at the Meeting of Creditors. Trustee continued the Meeting of Creditors to allow Debtors to file the returns, but Debtors did not appear at the continued meeting and did not provide evidence that the returns were filed. Trustee argues this is cause to dismiss under §§ 1307(e) and 1308.

Third, Debtor Steven failed to submit proof of his social security number at the Meeting of Creditors or the continued meeting as required by Federal Rule of Bankruptcy Procedure 4002(b)(1)(B). Trustee argues this is cause to dismiss under §§ 521(a)(3) and 1307(c)(1).

Fourth, Debtor failed to file an amended plan after Trustee's objection to confirmation was sustained on November 13, 2018. Trustee argues this is unreasonable delay that is prejudicial to creditors under § 1307(c)(1).

Prior Bankruptcies

While Debtors disclosed the prior bankruptcies filed in their petition (dkt. 1, pp. 3, 8), the court's review of these cases revealed that the cases have all been disposed of as follows:

<u>Case Number</u>	<u>Petition Filing Date</u>	<u>Dismissal Date</u>	<u>Reason for Dismissal</u>	<u>Docket Citations</u>
18-23072	May 16, 2018	September 10, 2018	Failure to file or provide federal and state tax returns, failure to provide proof of income, failure to attend Meeting of Creditors, and failure to propose a confirmable plan.	71, 73
18-20835	February 14, 2018	March 15, 2018	Failure to timely file documents after the deadline to file missing documents was extended.	14, 18

14-32084	December 12, 2014	January 20, 2016	Delinquent plan payments, failure to file motion to confirm plan, failure to provide tax returns.	104, 105
14-25862	May 31, 2014	November 3, 2014	Failure to present a confirmable plan, failure to file Schedules, and failure to substantiate value of real property for liquidation analysis.	25, 29
11-46417	November 7, 2011	July 3, 2013	Failure to propose a plan that will be completed within 60 months, and failure to file a timely motion to modify.	63, 64
11-39208	August 5, 2011	October 14, 2011	Case was dismissed for ineligibility.	42, 44

Discussion

The court intends to grant this motion and dismiss the case absent a substantial change in circumstances. The court will also address Debtors' abusive and bad faith repeat filing of nonproductive bankruptcy cases.

THE COURT WILL PREPARE A MINUTE ORDER.

16. [18-25197](#)-B-13 LORI MICKENS
Pauldeep Bains

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-26-18 [[36](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting debtor Lori Mickens ("Debtor") to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on November 19, 2018. Dkt. 36. While the delinquent installment was paid on November 27, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

17. [18-25617](#)-B-13 JOSE/JACQUELINE SEGURA
Thomas O. Gillis

CONTINUED MOTION TO CONFIRM
PLAN
11-6-18 [[37](#)]

No Ruling

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Dkt. 17. 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 the automatic stay.

Debtor Kim Clark ("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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on November 20, 2018, due to the failure to timely pay an installment according to the Order Approving Payment of Filing Fee (case no. 18-25185, dkt. 41 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

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).

The Debtor asserts that the case was filed to "save home [sic] from foreclosure actions," and that Debtor has total net monthly income of \$3,537.17, consisting of wages and her Social Security income. Debtor argues that this income is sufficient to cover her reasonable and necessary expenses of \$782.17 while still providing for her plan payments of \$2,755.00, as proposed in the plan filed concurrently with the case. Dkt. 11. Debtor also states that she "hired Mr. Macaluso to keep [her] case organized." Dkt. 14, ¶ 3.

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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

19. [18-26289](#)-B-13 SURJIT KUMAR AND POONAM CONTINUED OBJECTION TO
[JPJ](#)-1 KAUSHAL CONFIRMATION OF PLAN BY JAN P.
Peter G. Macaluso JOHNSON
11-20-18 [[13](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(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.

Trustee's Objection

First, Jan Johnson, the Chapter 13 trustee ("Trustee"), requested that debtors Surjit Kumar and Poonam Kaushal ("Debtors") file or provide the following documents: 1) an amended petition to add prior bankruptcy 11-46633; 2) an amended Statement of Financial Affairs to add an on-going mortgage payment to question #6, which is listed in Class 4 of the proposed plan, and add Stallions Suds at question #27; 3) a copy of Debtors' current business licenses and permits for Busy Spot Market and Stallion Suds; 4) September 2018 pay advices for Mr. Kumar; and 5) September bank statements for all bank accounts listed in Schedule A/B. Without doing so, Debtors have not complied with 11 U.S.C. § 521(a)(3).

Second, after reviewing Schedules A/B and C, Trustee calculates that there is \$45,075.00 of non-exempt equity. However, the proposed plan only provides \$40,400.80 to general unsecured creditors. Trustee notes that he filed an objection to Debtors' claim of exemptions (dkt. 16) due to exemptions claimed under tools of the trade and self-employment income misclassified as paid earnings. If successful, the estate's interest in non-exempt equity will increase. The hearing is scheduled for January 8, 2019. Dkt. 17. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(4).

December 11, 2018 Hearing

The court continued this matter for one week to allow Debtors to resolve any outstanding objections with Trustee.

Discussion

Based on the arguments presented, and because no pleadings have been filed to indicate that the matter has been resolved since the last hearing, the court finds that the plan filed October 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

20. [18-25595](#)-B-13 STEVEN/SHARON COLLINS
SW-1 Peter G. Macaluso
See Also #15

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-26-18 [[46](#)]

A-L FINANCIAL CORPORATION
VS.

Tentative Ruling

The court's decision is to deny the motion as moot based on the ruling on line item no. 15.

THE COURT WILL PREPARE A MINUTE ORDER.