UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 3, 2017 at 1:00 p.m.

1.	16-21411-B-13 JPJ-1	QUAN NGUYEN AND DIEM-KHANH VU Jasmin T. Nguyen	OBJECTION TO CLAIM OF ONEMAIN FINANCIAL GROUP, CLAIM NUMBER 42 11-7-16 [19]

Final Ruling: No appearance at the January 3, 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. 42 of OneMain Financial Group and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of OneMain Financial Group ("Creditor"), Proof of Claim No. 42 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,196.51. 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. 9. The Creditor's Proof of Claim was filed August 11, 2016.

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. Banker (In re Banker)*, 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.

2. 12-23313-B-13 EARLVEEN HAWKINS MOTION TO MODIFY PLAN
HLG-1 Kristy A. Hernandez 11-17-16 [30]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan Filed on November 17, 2016, 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 duration of the plan payments is unclear. The duration as stated in the Additional Provisions appear to come to a total of 60 months but the duration stated in Section 1.03 is 0 months.

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.

3.	12-39713-B-13 MAC-4	DONALD FLAVEL Marc A. Carpenter	CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 12-4-15 [68]

Tentative Ruling: The matter will be determined at the scheduled hearing.

This matter was continued from October 18, 2016. Debtor and Capital One, N.A. each filed a status report stating that the Debtor submitted a new loan modification application on September 30, 2016. On October 6, 2015, the Creditor sent to the Debtor a notice for additional information and documents in order for it to make a decision. The additional information and documents were due by December 20, 2016.

4. 16-20613-B-13 URAL THOMAS MOTION TO CONFIRM PLAN
LBG-5 Lucas B. Garcia 11-10-16 [144]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Filed November 10, 2016, 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 November 10, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5.	15-29417-B-13 JPJ-2	NORMA GUTIERREZ Mikalah R. Liviakis	OBJECTION TO CLAIM OF LOANNOW LLC, CLAIM NUMBER 23 11-7-16 [28]

Final Ruling: No appearance at the January 3, 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. 23 of LoanNow, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LoanNow, LLC ("Creditor"), Proof of Claim No. 23 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $4,234.96. 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 April 6, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Creditor's Proof of Claim was filed October 4, 2016.

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. Banker (In re Banker)*, 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.

6. 16-27317-B-13 BRIAN/KATHY BETLAN — MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICE
DEF-1 David Foyil — 11-16-16 [11]

Tentative Ruling: The Motion to Value Collateral of Wells Fargo Dealer Service a Division of Wells Fargo Bank, N.A. 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion to value.

Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Declaration of Kathy Beltan. Debtors are the owners of a 2006 Ford F-350 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $3,608.68 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. 1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting the retail value of the Vehicle to be $6,208.00 based on the NADA Used Car Guide. Dkt. 28, exh. C.

Discussion

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). This presumption is rebuttable. *See Id.* 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 (1st Cir. BAP 2009)).

Proof of Claim No. 1 filed by Wells Fargo Bank N.A., d/b/a/ Wells Fargo Dealer Services states a balance owed of $5,598.89 and a value of the Vehicle at $6,208.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $6,208.00 at 10.00% interest rate based on Proof of Claim No. 1.

The court will enter an appropriate minute order.

7. 16-25118-B-13 RICHARD CHASTAIN
JPJ-2 David P. Ritzinger

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-23-16 [29]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion without prejudice.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted, or in the alternative dismissed, based on the Debtor's failure to take further action to confirm a plan after the Trustee's objection to confirmation was heard and sustained on October 4, 2016.

Response by Debtor

The Debtor has filed a response stating that he has filed a first amended plan and that the delay was because Debtor was waiting on the Internal Revenue Service to process late-filed federal income tax returns for the years 2012, 2013, 2014, and 2015. Debtor asserts that the late-filed tax returns will eliminate all of his federal income tax liability except for penalties for 2015, which are provided for in the amended plan. Debtor further states that the amended plan pays 100% dividend to unsecured creditors and that conversion to a Chapter 7 would not result in additional payment to unsecured creditors over that which would be received in the Chapter 13 proceeding.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(b) § 1307(c) since the Debtor has filed an amended plan on December 13, 2016 and taken steps to prosecute this case. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

8. 16-27718-B-13 WILLIAM/DEBRA STEWART — MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
DJC-1 Diana J. Cavanaugh — 12-3-16 [12]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion to Value Secured Claim of Wheels Financial Group, LLC dba 1-800Loan Mart 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 deny without prejudice the motion to value.

Debtors' motion to value the secured claim of Wheels Financial Group, LLC dba 1-800LoanMart ("Creditor") is accompanied by the Declaration of William Stewart. Debtors are the owners of a 2003 Ford Mustang Coupe 2DR ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $1,722.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Wheels Financial Group, LLC dba 1-800LoanMart is the claim which may be the subject of the present motion.

Discussion

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). This presumption is rebuttable. *See Id.* 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 (1st Cir. BAP 2009)).

Proof of Claim No. 1 filed by Wheels Financial Group, LLC dba 1-800LoanMart states a balance owed of $7,012.11 and a value of the Vehicle at $1,760.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $1,760.00 at 5.00% interest rate based on Proof of Claim No. 1.

The court will enter an appropriate minute order.

9. 15-24226-B-13 RACHEL DIAZ MOTION TO DISMISS CASE
SBT-5 Susan B. Terrado 12-1-16 [61]

Final Ruling: No appearance at the January 13, 2017, hearing is required.

The Debtor's Motion to Voluntary Dismissal of Chapter 13 Case has been set for hearing on the 28-days' 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-BuTrk (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 dismiss the case without prejudice.

The Debtor has voluntarily moved to dismiss her case pursuant to 11 U.S.C. § 1307(b). This case was commenced by the filing of a voluntary petition on May 26, 2015. The Debtor's case has not been previously converted under 11 U.S.C. §§ 706, 1112, or 1208. There are no pending motions to convert this case to a Chapter 7 or pending motions to dismiss with prejudice. The Debtor asserts that she has not made any arrangements or agreements with any creditor in connection with her request for dismissal. The Debtor states that she no longer wishes to be involved in a bankruptcy proceeding. Because there appears to be no reason to deny the motion, the motion is granted and this case is ordered dismissed. *See Rosson v. Fitzgerald (in re Rosson)*, 545 F.3d 764, 773-74 (9th Cir. 2008).

The court will enter an appropriate minute order.

10. 16-27231-B-13 MICHELLE AVIADO
JPJ-1 Tracy L. Wood

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-16 [21]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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.

First, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's disposable income is $3,472.09 and the Debtor must pay no less than $208,325.40 to unsecured non-priority creditors. The plan will pay only $0.00 to unsecured non-priority creditors.

Second, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, feasibility depends on the granting of a motion to value collateral for Consumer Portfolio Services. To date the Debtor has not filed, set for hearing, and served upon the respondent creditor and the Trustee a stand alone motion to value the collateral. Local Bankr. R. 3015-1(j).

Fourth, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan does not specify a monthly payment for administrative expenses.

Fifth, the claim of Consumer Portfolio Services is misclassified as a Class 6 claim. The pre-written language of the form plan defines Class 6 claims as designated unsecured claims. This claim is for a Nissan Sentra and appears to be for the same debt listed in Class 2 of the plan.

The plan filed October 31, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

11. 16-23233-B-13 STACY DEL RIO — MOTION TO CONFIRM PLAN
TAG-2 Ted A. Greene — 11-9-16 [55]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Second Amended Chapter 13 Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Second Amended Chapter 13 Plan is dismissed without prejudice.

The court will enter an appropriate minute order.

12. 16-24335-B-13 BRANDON MCDONALD
JPJ-3 Ted A. Greene

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-15-16 [58]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the 28-days' 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,125.00, which represents approximately 3 plan payment. By the time this matter is heard, two additional plan payments in the amounts of $1,375.00 each will also be due. The Debtor has not made any plan payments since this petition was filed on July 1, 2016. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, the Debtor has failed to take further action to confirm a plan in this case after the Trustee's objection to confirmation was heard and sustained on September 13, 2016. The Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Third, the Trustee's objection to claim of exemptions was heard and sustained on October 4, 2016, and there are no valid exemptions in this case causing the non-exempt property to be $14,289.00. Since there is non-exempt property, conversion to a Chapter 7 rather than dismissal is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing

facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor is delinquent, had failed to prosecute this case, and there are non-exempt assets in the estate for the benefit of creditors. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

13. 16-27041-B-13 CHAD/STEPHANIE HUNSAKER
CJO-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
12-2-16 [13]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 3, 2017, hearing is required.

Lakeview Loan Servicing, 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)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Although there is no other objection to confirmation, the plan filed October 23, 2016, will not be confirmed because Debtors filed an amended plan on December 12, 2016. The confirmation hearing for the amended plan is scheduled for January 24, 2017.

The court will enter an appropriate minute order.

14. 16-24044-B-13 VICTORIA KIRCHIK MOTION TO CONFIRM PLAN
SRP-2 Shawn R. Parr 11-22-16 [54]
Thru #15

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

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

First, the Debtor has not provided evidence of her ability to make a lump sum payment of approximately $16,500.00. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a date for the lump sum payment of approximately $16,500.00. Therefore, the plan cannot be assessed for feasibility or effectively administered.

Third, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

Fourth, the plan does not specify a duration of payments.

Fifth, the plan will take approximately 600 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Sixth, the plan payment in the amount of $50.00 for the first five months and $1,365.96 thereafter do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $5,332.25. The plan does not comply with Section 4.02 of the mandatory form plan.

Seventh, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

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

The court is aware that the 75-day deadline to confirm a plan expired on December 31, 2016. However, December 31, 2016, is a Saturday. January 3, 2017, is the first hearing date after that date, and the court did not have any hearings scheduled on the two Tuesdays proceeding December 31, 2016. Therefore, for purposes of the first amended plan and the hearing on the motion to confirm it, the deadline to confirm a plan is extended to January 3, 2017. However, since the court has now denied confirmation of the last amended plan, the case will be dismissed if requested by the Trustee at the time of the hearing. *See* dkt. 53.

The court will enter an appropriate minute order.

15. 16-24044-B-13 VICTORIA KIRCHIK
SRP-2 Shawn R. Parr

OBJECTION TO CONFIRMATION OF PLAN BY FCI LENDER SERVICES, INC.
12-15-16 [66]

Tentative Ruling: The Objection to Debtor's Proposed First Amended Chapter 13 Plan and Confirmation Thereof was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot, deny confirmation of the plan for reasons stated below and as supplemented by Item #14, and dismiss the case for reasons stated at Item #14.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $78,974.54 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Attorneys' Fees Requested

Although requested in the Objection, creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with its Objection. The creditor is not awarded any attorneys' fees.

The amended plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed for reasons stated above and as supplemented by Item #14. Furthermore, the case is dismissed for reasons stated at Item #14.

The court will enter an appropriate minute order.

16. 16-27045-B-13 CARLOS MEJIA
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-8-16 [13]

CONTINUED TO 1/10/17 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS HELD ON 1/05/17.

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The court will enter an appropriate minute order.

17. 16-28048-B-13 STANLEY CHARLES — MOTION TO EXTEND AUTOMATIC STAY
Tory M. Pankopf — 12-20-16 [19]

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 strike the motion for order extending the automatic stay filed by John Gregory Downing and deny without prejudice the motion extending the automatic stay filed by Tory M. Pankopf.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 5, 2016, after the Debtor failed to timely file documents (case no. 16-27782, dkt. 8). 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.

The motion calendered for hearing today, January 3, 2017, is docket no. 19. However, there are actually two motions to extend the automatic stay on the court's docket. The first motion was filed by attorney John Gregory Downing at 4:32 p.m. on December 20, 2016. *See* dkts. 19-22. The second motion was filed by attorney Tory M. Pankopf at 5:55 p.m. also on December 20, 2016.[1] *See* dkts. 23-26. Neither motion is properly before the court. Both are addressed below.

(1) The Downing Motion and Related Documents are Fugitive Documents.

Mr. Pankopf, and not Mr. Downing, was the Debtor's attorney of record on December 20, 2016. The court is aware that on December 29, 2016, Mr. Downing filed a motion to substitute as the Debtor's attorney in lieu of Mr. Pankopf and requested that his substitution be made effective retroactive to December 20, 2016. In an order dated December 30, 2016, the court granted the substitution but denied retroactive approval making substitution effective December 30, 2016.

The written substitution that Mr. Downing filed on December 29, 2016 (dkt. 32), did not comply with Local Bankr. R. 2017-1(h) because it was not signed by Mr. Pankopf. Nevertheless, the court approved it so as to not deprive the Debtor of his counsel of choice as it appears the Debtor now desires to be represented by Mr. Downing and not Mr. Pankopf. However, retroactive approval to December 20, 2016, was denied because Mr. Downing failed to demonstrate exceptional circumstances that warranted retroactive approval, *i.e.*, (1) there was no explanation for the delay in filing the substitution which was dated December 20, 2016, but not filed until December 29, 2016, and (2) there was no showing of any benefit to the estate from services that might have been performed before approval of substitution was requested. *See Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 976 (9th Cir. 1995) (citing and discussing *Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.)*, 837 F.2d 389, 392 (9th Cir. 1988)). That means Mr. Pankopf, and not Mr. Downing, was the Debtor's attorney of record on December 20, 2016.

Since Mr. Downing was not the Debtor's attorney of record on December 20, 2016, and Mr. Pankopf was, that also means the motion and related documents that Mr. Downing filed at docket nos. 19-22 are fugitive documents. And as fugitive documents filed by an

[1] Mr. Pankopf also filed an ex parte application for an order shortening the time to hear the motion that he filed. *See* Dkt. 18. He also signed and filed the petition as the Debtor's attorney. *See* Dkt. 1.

attorney who was not the Debtor's attorney of record, the documents that Mr. Downing filed at docket nos. 19-22 are ordered stricken.

(2) The Pankopf Motion and Related Documents Violate This Court's Sanction Order.

With the motion and related documents that Mr. Downing filed at docket nos. 19-22 stricken, that leaves the motion and related documents at docket nos. 23-26 that Mr. Pankopf also filed on December 20, 2016, as the only motion by the Debtor for an extension of the automatic stay. The court denied the ex parte application for an order shortening time to the hear that motion in an order dated December 22, 2016. Dkt. 27. The court denied the ex parte application for an order shortening time for the following reason:

> **ORDERED DENIED.**
> The ex parte application for an order shortening time filed on December 20, 2016 [Dkt. 18] by attorney Tory M. Pankopf violates this courts sanction order filed on August 10, 2016, in In re 1712 Carnegie Way, LLC., Case No. 16-22634. In relevant part, that order states as follows:
>
> IT IS FURTHER ORDERED that as a sanction for violating LBR 9004-l(c) Tory M. Pankopf and the Law Offices of T M Pankopf PLLC are prohibited from filing documents in the United States Bankruptcy Court for the Eastern District of California with electronic signatures for a period of one year from entry of this order. During that one-year period any document filed by Mr. Pankopf or the Law Offices of T M. Pankopf that requires a signature shall be a scanned copy of the original "wet" ink signature.
>
> The ex parte application for an order shortening time that Mr. Pankopf filed in the above-captioned case includes an electronic signature and not a scanned copy of the original wet ink signature.

Mr. Pankopf conceded in the ex parte application that absent an order shortening time to hear the motion to extend the automatic stay that he filed on the Debtor's behalf, that motion would not be properly before the court. *See* dkt. 18 at 1. However, even assuming that under the court's local rules it was not necessary for Mr. Pankopf to obtain an order shortening time for the court to hear the motion he filed on December 20, 2016, that motion would still be denied. That motion would be denied for the same reason the court the court denied the ex parte application for an order shortening time, *i.e.*, the motion, notice of hearing, and supporting declaration all were filed in violation of the above-referenced sanctions order entered in the *1712 Carnegie Way* case because they all have Mr. Pankopf's and the Debtor's electronic signatures and not scanned copies of their wet ink signatures. And in any event, Mr. Pankopf no longer is the Debtor's attorney of record in this case.

Conclusion

In sum, the motion for an order extending the automatic stay that Mr. Downing filed is stricken and the motion for an order extending the automatic stay that Mr. Pankopf filed is denied without prejudice. The automatic stay will not be extended and the automatic stay of § 362(a) shall terminate 30 days from the date the petition in this case was filed.

The court will enter an appropriate minute order.

18. 16-26849-B-13 JPJ-1 **Thru #19**
EUGENIA HERRERA-ABEA
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-16 [20]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

Feasibility depends on the granting of a motion to value collateral for Wells Fargo Home Mortgage. That motion is granted at Item #19.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed October 14, 2016, is confirmed.

The court will enter an appropriate minute order.

19. 16-26849-B-13 PGM-1
EUGENIA HERRERA-ABEA
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE
12-2-16 [15]

Tentative Ruling: The Motion to Value Collateral of Wells Fargo Home Mortgage has been set for hearing on the 28 days' 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Wells Fargo Home Mortgage at $0.00.

Debtor's motion to value the secured claim of Wells Fargo Home Mortgage ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7547 Whitmore Street, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $260,000.00 as of the petition filing date. As the owner, Debtor's 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).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount

> subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

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

The first deed of trust secures a claim with a balance of approximately $267,679.25. Creditor's second deed of trust secures a claim with a balance of approximately $22,450.00. Therefore, Creditor's claim secured by a junior deed of trust 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 court will enter an appropriate minute order.

20. 16-28058-B-13 CASEY HONSA MOTION TO EXTEND AUTOMATIC STAY
SNM-1 Stephen N. Murphy 12-20-16 [9]

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 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) 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 November 7, 2016, after Debtor failed to timely file required documents (case no. 16-27082, dkt. 10). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the previous case and instant case were filed in order to save his residence from foreclosure. The previous case failed when the Debtor filed pro se after attorneys who helped him with a loan modification, which failed, instructed him to file Chapter 13 bankruptcy pro se one day prior to a scheduled foreclosure sale. The Debtor was unaware of his responsibilities to file schedules and a plan within 14 days. The Debtor's case was dismissed prior to Debtor being able to retain competent legal counsel. Debtor asserts that his circumstances have changed since the Debtor is now represented by competent legal counsel and the Debtor's non-filing spouse recently resumed full-time employment after a long period of under-employment and unemployment. 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 court will enter an appropriate minute order.

21.	13-32859-B-13 PGM-3	VINCENT GUTIERREZ Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY 11-18-16 [49]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Application for Additional Attorney Fees 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 without prejudice the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00. Dkt. 31. Applicant now seeks additional compensation in the amount of $1,035.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 52.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant here does not address the foregoing standard. While preparing a motion to modify was post-confirmation work, the Applicant does not explain why it was substantial and unanticipated. Indeed, it is typical for a confirmed plan to be modified at least once. Accordingly, the motion for compensation is denied without prejudice.

The court will enter an appropriate minute order.

22. 16-20360-B-13 PEDRO/CATALINA ZAMBRANO MOTION TO CONFIRM PLAN
TOG-3 Thomas O. Gillis 11-7-16 [80]

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion to Confirm the Second Amended Chapter 13 Plan of Debtors 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 second amended plan.

11 U.S.C. § 1323 permits debtors to amend a plan any time before confirmation. The Debtors have 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 November 7, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

23. 16-27061-B-13 DANIEL CEJA
JPJ-1 Stephen N. Murphy

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-16 [34]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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.

First, the plan will take approximately 250 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, the Debtor has not provided to the Trustee copies of certain items related to his business including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed November 4, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

24. 14-21464-B-13 WILLIAM MCDANIELS JR. MOTION TO MODIFY PLAN
RJ-4 Richard L. Jare 11-8-16 [63]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $450.00. By the time this matter is heard, an additional plan payment in the amount of $950.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Additional Provisions state that the priority claim of the Internal Revenue Service will not be paid in full under a consent agreement. The Debtor has provided no evidence of a consent agreement showing that the Internal Revenue Service expressly consents to less than payment in full of its priority claim.

Third, the Declaration of Debtor states that amended Schedules I and J will be filed to show monthly net income of $950.00. To date, no such amendments have been filed. The most recent Schedules I and J, which were filed July 31, 2014, show monthly net income of only $750.00.

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.

25. 14-32364-B-13 MICHAEL/PAULA RHOADES
JPJ-3 Peter L. Cianchetta

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-29-16 [127]

DEBTOR DISMISSED:
12/06/2016
JOINT DEBTOR DISMISSED:
12/06/2016

Final Ruling: No appearance at the January 3, 2017, hearing is required. The case was dismissed on December 6, 2016. The motion is denied as moot.

The court will enter an appropriate minute order.

26. 15-24164-B-13 JAKE/BRENDA ESCALANTE MOTION TO MODIFY PLAN
FF-2 Gary Ray Fraley 11-22-16 [56]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated November 22, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan will take approximately 68 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the treatment for secured claims of GM Financial for a 2007 Audi Q7 and Flagship Credit Acceptance for a 2010 Infinity G37 is unclear. The claims of both creditors are listed twice in Class 2. Each creditor has filed one proof of claim: GM Financial in the amount of $23,351.81 and Flagship Credit Acceptance in the amount of $28,107.24. The plan provides no explanation or basis for dividing the creditors' one claim into two.

Third, the post-confirmation modified plan filed November 22, 2016, proposes to change the interest rate on at least a portion of the secured debts owed to GM Financial and Flagship Credit Acceptance from 4.5% to 0%. There is nothing in 11 U.S.C. § 1329 that permits the Debtors to change the interest rate in a post-confirmation modified plan.

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.

27. 16-23766-B-13 EDWARD GRINDROD MOTION TO MODIFY PLAN
SS-2 Scott D. Shumaker 11-29-16 [45]

Tentative Ruling: The Debtor's Motion for Order Confirming First Modified Plan Filed November 29, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan payments in the amount of $2,047.00 for 17 months, $2,247.00 for 8 months, and $2,397.00 for 19 months do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,419.87. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the post-confirmation modified plan filed November 29, 2016, proposes to change the interest rate on the secured debt owed to Golden One Credit Union, Golden One Credit Union, and Santander Consumer USA in Class 5 from 5.5% to 5%. There is nothing in 11 U.S.C. § 1329 that permits the Debtor to change the interst rate in a post-confirmation modified plan.

Third, feasibility of the plan cannot be fully assessed. The Declaration of the Debtor states that there is no change in his budget. However, amended Schedules I and J filed on November 29, 2016, show a significant change in his budget. Amended Schedules I and J show that the Debtor is no longer employed at PG&E and has had a decrease in monthly income from $6,420.00 to $3,510.00. Additionally, the amended Schedules I and J appear to be for a different debtor named JoAnn Gowans. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the plan adds a tax liability to Class 6 for the Internal Revenue Service but the Trustee cannot pay the creditor since the creditor has not filed a proof of claim and the deadline for governmental units to file a proof of claim was December 7, 2016.

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.

28. 16-26567-B-13 DANIEL/PATRICIA FUSCO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-1 Ashley R. Amerio — 11-17-16 [14]

Tentative Ruling: The Objection to Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtors' claimed interest in a Banner Bank checking account, Banner Bank savings account, Golden One Credit Union checking account, and Golden One Credit Union savings account in their full amounts. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtors may not claim the entire asset value as exempt as only 75% of the paid earnings that can be traced into deposit accounts are exempt.

Debtors have filed a response asserting that the total amount of bank account balances represents only 31% of the total joint net income of $8,755.08 received within 30 days of filing and as listed on Schedule I. The Debtors assert that the exemption is therefore proper.

With regard to the Debtors' contention that the funds in the accounts represent paid earnings received within 30 days prior to the bankruptcy proceeding, the Debtors shall file evidence, such as payroll stubs, deposit receipts, and bank statements, to show where the disputed funds came from and that they fall within the scope of § 704.070. In other words, the Debtors have the burden of proof on their claim of exemption, and they have failed to satisfy it. *Diaz v. Kosmala*, 547 B.R. 329, 337 (9th Cir. BAP 2016); *see also In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashcnee*, 531 B.R. 834 (Bankr. E.D. Ca. 2015). Even if the Debtors are able to establish that the disputed funds are traceable to paid earnings, their exemption is limited to 75% of the amount in dispute. California Code of Civil Procedure § 704.070(b)(2).

The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.

29. 11-48070-B-13 DOUGLAS/TANA TOLSON
RLC-1 Stephen M. Reynolds
Thru #30

MOTION TO APPROVE LOAN MODIFICATION
12-2-16 [102]

DEBTOR AND JOINT DEBTOR DISMISSED:
10/24/2016
DISMISSAL VACATED:
12/13/16

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion to Approve Loan Modification has been set for hearing on the 28 days' 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 permit the loan modification requested.

Debtors seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC Successor to GMAC Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $3,683.66 a month to $1,505.03 a month. The modification will not change the rate of interest on the loan or the principle amount owed on the loan. The new payment will become first due on May 1, 2016.

The motion is supported by the Declaration of Douglas Tolson and Tana Tolson. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

30. 11-48070-B-13 DOUGLAS/TANA TOLSON
RLC-3 Stephen M. Reynolds

MOTION TO MODIFY PLAN
11-21-16 [97]

DEBTOR AND JOINT DEBTOR DISMISSED:
10/24/2016
DISMISSAL VACATED:
12/13/16

Tentative Ruling: The Motion to Confirm First Modified Plan Dated November 14, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule

9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan does not specify any payments for months 1 through 51.

Second, the Debtors have failed to file amended Schedules I and J or other documentation showing their monthly net income. Schedule J filed on February 28, 2012, shows monthly net income of $3,906.56. With the new mortgage payment according to the loan modification of $1,505.03, the Debtors' net income is $2,401.53. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. §§ 1325(a)(3) or (a)(6).

Third, the treatment of the Internal Revenue Service in Class 2 is incomplete and unclear. The columns for "Amounts Claimed by Creditor" and "Interest Rate" are blank and the monthly dividend is $0.00. It is not possible for the Trustee to pay the claim of the Internal Revenue Service without clear and concise terms ofr payment in the plan.

The Debtors have filed a response asserting that the above issues can be resolved in the order confirming. However, the Debtors' response does not clearly state the terms that would be provided for in the order confirming and it does not appear that all the issues would be resolved.

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.

31. 16-24873-B-13 LYNDA COBURN
JHW-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-16 [38]

FORD MOTOR CREDIT COMPANY, LLC VS.

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion for Relief From the Automatic Stay 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 grant the motion for relief from stay.

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Ford Fiesta, VIN ending in 6480 (the "Vehicle"). The moving party has provided the Declaration of Laurel Baldwin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Baldwin Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $1,078.23 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $20,660.56, as stated in the Baldwin Declaration, while the value of the Vehicle is determined to be $21,581.00, as stated in amended Schedules B filed by Debtor. Dkt. 34.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Ford Motor Credit Company LLC, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

32. 14-30277-B-13 ROBERT/JUDY HAUGHS — MOTION FOR RELIEF FROM AUTOMATIC STAY
EMM-1 Jeffrey S. Ogilvie — 12-2-16 [34]

TOYOTA LEASE TRUST VS.

Final Ruling: No appearance at the January 3, 2017, hearing is required.

The Motion for Relief From the Automatic Stay 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 grant the motion for relief from stay.

Toyota Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Toyota Prius, VIN ending in 8623 (the "Vehicle"). The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Nishimura Declaration provides testimony that the Debtors executed a lease agreement with Movant in the original principal amount of $26,995.00 on November 3, 2013. The Declaration further states that on or about November 2, 2016, the Debtors voluntarily surrendered possession of the vehicle to Movant and Movant remains in possession of the vehicle at this time.

Discussion

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). The Vehicle is a leased vehicle and the Debtors have voluntarily surrendered possession to the Movant. The court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Toyota Leasing Trust, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

33. 16-27481-B-13 ARMANDA CASIAS — MOTION TO AVOID LIEN OF GOLDEN ONE CREDIT UNION
MET-1 Mary Ellen Terranella — 12-10-16 [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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Golden One Credit Union ("Creditor") against the Debtor's property commonly known as 780 Barton Way, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $18,050.29. An abstract of judgment was recorded with Solano County on September 12, 2012, which encumbers the Property. All other liens recorded against the Property total $542,980.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $565,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

34. 16-27283-B-13 LARRY/DIANA HUFF
JPJ-1 Eamonn Foster
Thru #35

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-15-16 [15]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, the plan payment in the amount of $5,170.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $5,281.08. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed November 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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 the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

35. 16-27283-B-13 LARRY/DIANA HUFF
RCO-1 Eamonn Foster

OBJECTION TO CONFIRMATION OF PLAN BY J.G. WENTWORTH HOME LENDING, INC.
12-15-16 [18]

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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #34.

The objecting creditor holds a deed of trust secured by the Debtors' residence. The

creditor asserts $40,891.75 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The Declaration of Corletta Black does not state the calculation of claimed pre-petition arrears nor are any exhibits attached as stated in the Declaration. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item # 34, the plan filed November 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

36. 13-33189-B-13 DANIEL/LORI CAMARENA
PGM-7 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
11-28-16 [97]

Tentative Ruling: The Application for Additional Attorney Fees 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant in part and deny in part the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00. Dkt. 58. Applicant now seeks additional compensation in the amount of $2,715.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 100.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would receive a loan modification and that a vehicle listed in Class 2 of the plan would be totaled. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided.

However, as noted by the Trustee, counsel may only request substantial and unanticipated post-confirmation work. The work performed on January 3, 10, and 13 in 2014 was pre-confirmation work. Therefore, those services, which total $510.00, are disallowed.

The court finds that the post-confirmation services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$2,715.00
Additional Costs and Expenses	$ 0.00
Less "pre-confirmation" fees	($ 510.00)
Total	**$2,205.00**

The court will enter an appropriate minute order.

37. 16-27089-B-13 JPJ-1 **Thru #38**

LEONARDO MERCURIO
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-8-16 [23]

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). No written reply has been filed to the objection.

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

First, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Second, the Debtor did not appear at the meeting of creditors set for December 1, 2016, as required pursuant to 11 U.S.C. § 343.

Third, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fifth, the plan cannot be fully assessed for feasibility because the Debtor did not sign the plan.

Sixth, the plan specifies a monthly dividend to Wells Fargo in Class 1. It is not possible to pay the claim of this creditor through the plan with a monthly dividend of $0.00.

Seventh, the plan will take approximately 225 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Eighth, the claim of the Internal Revenue Service and the Franchise Tax Board appear to be misclassified as Class 1 claims. Class 1 claims are defined as long-term secured claims that were delinquent when the case was filed.

The plan filed November 8, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

38. 16-27089-B-13 MJ-1

LEONARDO MERCURIO
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
12-6-16 [19]

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

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $21,119.40 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed November 8, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

39.	16-27092-B-13 JPJ-1	ROBERT BISHOP Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 12-8-16 [30]

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 matter will be determined at the scheduled hearing.

40. 16-21793-B-13 ABU ALAMIN MOTION TO MODIFY PLAN
MLF-5 Jessica R. Galletta 11-26-16 [78]

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

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

First, the Debtor has not amended Schedules I and J or other documentation showing monthly net income. According to Schedule J filed April 27, 2016, the Debtor's monthly net income was $5,616.77. With the Debtor now paying his mortgage directly according to the loan modification at $2,181.72, the Debtor's monthly net income is or should be $3,435.05. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. §§ 1325(a)(3) or (a)(6).

Second, the plan payment of $58.01 per month is not adequate to pay the remaining amounts owed to the Franchise Tax Board of approximately $2,861.15 on the priority portion of its claim and $10,982.75 on the unsecured nonpriority portion of its claim. The plan will take approximately 215 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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.

41. 16-22995-B-7 WALLEN YEP
Jonathan D. Matthews

CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN
11-5-16 [57]

CASE CONVERTED: 11/22/2016

Final Ruling: No appearance at the January 3, 2017, hearing is required. This case was converted to one under Chapter 7 on November 22, 2016. The motion to confirm is denied as moot.

The court will enter an appropriate minute order.

42. 16-26999-B-13 ANGELINA KUBRAKOV
APN-1 Pro Se
Thru #45

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
12-8-16 [41]

MOOT PER ITEM #45

43. 16-26999-B-13 ANGELINA KUBRAKOV
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-16 [38]

MOOT PER ITEM #45

44. 16-26999-B-13 ANGELINA KUBRAKOV
MJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-22-16 [29]

MOOT PER ITEM #45

45. 16-26999-B-13 ANGELINA KUBRAKOV
PPR-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
11-28-16 [33]

Tentative Ruling: The Objections to Proposed Chapter 13 Plan and Confirmation Thereof was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to dismiss this Chapter 13 case with prejudice. Because there is evidence that debtor Angelina Kubrakov ("Debtor") has used different social security numbers in multiple Chapter 13 cases, the court will also refer this matter to the United States Attorney for the Eastern District of California.

The court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure ("Civil Rule") 52(a) made applicable by Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 7052 and 9014 are set forth below.

Introduction

Before the court is an objection to confirmation filed by secured creditor Deutsche Bank National Trust Company, as Trustee for Harbor View Mortgage Loan Trust 2004-11

Mortgage Loan Pass-Through Certificates, Series 2004-11. Dkt. 33.[1] Deutsche objects to confirmation of the Debtor's proposed Chapter 13 plan and moves to dismiss the Debtor's Chapter 13 case with prejudice under 11 U.S.C. § 109(g). Deutsche cites the Debtor's bad faith conduct as the requisite cause for dismissal under § 1307(c). The Chapter 13 Trustee ("Trustee") (dkt. 38) and Wells Fargo Bank N.A. (dkts. 29, 41)[2] also object to confirmation of the Debtor's proposed plan. The Debtor has not responded to the objections or addressed the bad faith allegations.

The court has thoroughly reviewed the docket in this Chapter 13 case, the dockets in two other Chapter 13 cases the Debtor filed in the past 16 months, and the docket in a Chapter 13 case filed by another individual who used the same social security number the Debtor used in her second Chapter 13 case. All of these Chapter 13 cases are part of the "totality of the circumstances" the court must consider to determine if the petition in this (third) Chapter 13 case was filed in bad faith, if this Chapter 13 case should be dismissed or converted for cause and, if dismissed, whether dismissal should be with or without prejudice.

The Debtor is an experienced pro se Chapter 13 filer. As noted above, this case is the third Chapter 13 case the Debtor has filed in the past sixteen months. In each of her three Chapter 13 cases the Debtor has filed incomplete and conflicting petitions and schedules. In each of her three Chapter 13 cases the Debtor has also filed incomplete or blank and patently defective plans that conflict with the schedules. No plans in any of the Debtor's Chapter 13 cases have been confirmed. The Debtor's first Chapter 13 case was dismissed prior to the confirmation hearing. Plans filed in the Debtor's second Chapter 13 case and in this (third) Chapter 13 case drew meritorious objections from secured creditors and the Trustee.

In the overall context of the circumstances surrounding the Debtor's multiple Chapter 13 filings, the court is persuaded that the Debtor has engaged in bad faith conduct and this (third) Chapter 13 case was filed in bad faith. Therefore, for the reasons explained below, this case will be ordered dismissed for cause under § 1307(c) and dismissal will be with prejudice pursuant to § 109(g).[3]

Background

The Debtor filed her first Chapter 13 case, case no. 15-24462, on June 1, 2015. With the petition filed in that first Chapter 13 case the Debtor filed a statement in which she declared under penalty of perjury that her social security number was "**xxx-xx-7897**" and that she used no other social security number(s). The proposed Chapter 13 plan filed in the Debtor's first Chapter 13 case was substantially blank and, in that regard, inconsistent with the schedules. At the Debtor's request, her first Chapter 13 case was dismissed on July 6, 2015, before the § 341 meeting set for July 9, 2015.

Ten months later, on May 10, 2016, the Debtor filed her second Chapter 13 case, case no. 16-23027. With the petition filed to commence the second Chapter 13 case the Debtor again filed a statement in which she declared under penalty of perjury that her social security number was "**xxx-xx-9586**" and, thus, different from the social security

[1] The Deutsche loan is secured by a deed of trust on real property located at 9595 Harvest View Way, Sacramento, California. Nationstar Mortgage, LLC, appears to be the servicer of this loan. Dkt. 12.

[2] The Debtor appears to have two separate Wells Fargo loans, both of which are secured by deeds of trust on the real property located at 9618-9620 Knickers Court, Sacramento, California.

[3] In reaching this decision the court has considered conversion as an alternative. However, it appears that the Debtor has only about $4,000.00 in non-exempt assets making conversion impracticable.

number she used in her first Chapter 13 case.[4] The Debtor also stated under penalty of perjury that she used no other social security number(s). The Debtor later amended her social security statement on August 2, 2016, to reflect a social security number of "**xxx-xx-7897**." However, that amendment was filed only after the Debtor appeared at a continued § 341 meeting on July 21, 2016.[5]

The initial and amended Schedule A/B filed in the Debtor's second Chapter 13 case listed two real properties owned by the Debtor. The first is the Harvest View Way property. The Debtor valued that property at $336,000.00 in Schedule A/B and claimed to own a $336,000.00 interest in the property. The second is the Knickers Court property. The Debtor valued that property at $185,000.00 in Schedule A/B and claimed to own a $185,000.00 interest in the property. In the second Chapter 13 case the Debtor also filed a blank Schedule D and an initial and amended Schedule E/F which listed Nationstar (Deutsche) with a $336,000.00 unsecured claim and Wells Fargo with a $185,000.00 unsecured claim.

The proposed plan the Debtor filed in her second Chapter 13 case was largely blank. It omitted any treatment for creditors listed in the schedules. An amended plan was no better. The Debtor's amended plan omitted the Nationstar (Deutsche) secured claim and classified the Wells Fargo secured claim as unsecured despite the fact that both creditors had filed (uncontested) secured proofs of claim well before the Debtor filed the amended plan.

Ultimately, the Debtor's second Chapter 13 case was dismissed on September 10, 2016. It was dismissed after the court determined the Debtor was ineligible for Chapter 13 relief based on her initially-filed and subsequently-amended Schedule E/F, which listed noncontingent, liquidated unsecured debt well in excess of the § 109(e) statutory cap.

One month and eleven days after the Debtor's second Chapter 13 case was dismissed, on October 21, 2016, the Debtor filed her present (third) Chapter 13 case, case no. 16-26999. Again, with the petition the Debtor filed a statement in which she declared under penalty of perjury that her social security number was "**xxx-xx-7897**" and that she had used no other social security number(s).

Schedules filed in the current (third) Chapter 13 case are again inaccurate, misleading, and deceptive. Despite knowing from her second Chapter 13 case that both Deutsche (Nationstar) and Wells Fargo assert secured claims, the Debtor filed a blank Schedule D with the petition. Nationstar (Deutsche) was subsequently listed in an amended Schedule D filed on November 21, 2016; however, Wells Fargo was not. Wells Fargo was subsequently listed in an amended Schedule D filed on December 27, 2016; however, Nationstar (Deutsche) was not. In Schedule E/F filed on November 3, 2016, the Debtor listed Wells Fargo with an unsecured claim of $185,000.00 and omitted Nationstar (Deutsche). In another Schedule E/F filed on December 29, 2016, the Debtor listed Nationstar (Deutsche) with an unsecured claim of $336,000.00 and omitted Wells Fargo.

The Debtor's proposed plan makes no provision for payment of either the Deutsche (Nationstar) or Wells Fargo secured claims which, according to both secured creditors, include substantial arrears. An amended plan was filed on December 29, 2016; however, it was filed without a motion to confirm it and it was not set for hearing. The amended plan omits Deutsche (Nationstar) and classifies Wells Fargo as a Class 1 secured claim for the payment of arrears and a Class 3 secured claim for the surrender of collateral.

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[4]The social security number the Debtor filed with the petition in the second Chapter 13 case was used by another individual to file an earlier Chapter 13 case on October 24, 2011, as case no. 11-45170, under the name of Valeriy Kubrakov.

[5]The Debtor failed to appear at the initial § 341 meeting on June 16, 2016, and at a subsequently continued § 341 meeting on August 4, 2016.

Discussion

Section 1307(c) sets forth nonexclusive grounds that may constitute cause for dismissal of a Chapter 13 case. Although not specifically listed, bad faith is "cause" for dismissal under § 1307(c). *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994). Bad faith is also cause for dismissal with prejudice. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) (citation omitted). Bad faith is determined based on a consideration of a totality of the circumstances. *Id.* The totality of the circumstances includes factors leading up to the filing of a petition. *See Matter of Little Creek Develop. Co.*, 779 F. 2d 1068, 1072 (5th Cir. 1986).

The court considers the following factors when assessing bad faith under the totality of the circumstances analysis:

(1) whether the debtor misrepresented facts in the petition or plan, or unfairly manipulated the Bankruptcy Code;

(2) the debtor's history of filings and dismissals;

(3) whether the debtor intended to defeat state court litigation; and

(4) whether egregious behavior is present.

Leavitt, 171 F.3d at 1224; *see also Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1132 (9th Cir. 2013) (citing *Leavitt*, 171 F.3d at 1224); *Goeb v. Heid (In re Goeb)*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The bankruptcy court is not required to find that each factor is satisfied, or even weigh each factor equally. *See Meyer v. Lepe (In re Lepe)*, 470 B.R. 851, 863 (9th Cir. BAP 2012) Here, the court notes that one factor is inapplicable insofar as there is no indication that the Debtor filed any of the Chapter 13 cases to defeat state court litigation. However, the elimination of that single factor does not end the court's analysis. *See Id.*

When the totality of the Debtor's circumstances are examined - and that means not only the present Chapter 13 case but the two other Chapter 13 cases, which are relevant in the analysis - three of the four *Leavitt* factors support a finding of bad faith and, thus, weigh heavily in favor of dismissal with prejudice. The reasons why are explained below.

Use of False or Inaccurate Social Security Numbers

Bankruptcy Rule 4002(b)(1)(B) requires every individual debtor to bring to the § 341 creditors' meeting evidence of a social security number or a written statement that such documentation does not exist. Official Form 121, Statement of Social Security Number, must also be filed by the debtor under penalty of perjury. The official Form implements Bankruptcy Rule 1007(f) which requires every debtor to file with the petition a statement, signed under penalty of perjury, of the debtor's social security number or state that the debtor does not have one. Bankruptcy Rule 1005 also requires the caption of a petition to contain the last four digits of the debtor's social security number, and § 342(c)(1) provides that any notice to a creditor shall contain the last four digits of the debtor's tax identification number, *i.e.* the debtor's social security number.

The significance of the foregoing requirements is that providing an accurate social security number is not just a matter of form, rather, it is of substantive importance. *See In re Merlo*, 265 B.R. 502, 504-505 (Bankr. S.D. Fla. 2001); *see also In re Adair*, 212 B.R. 171 (Bankr. N.D. Ga. 1997). In that regard, the use of a false social security number is egregious conduct because it may be chargeable as a crime under 18 U.S.C. § 152. *See In re Riccardo*, 248 B.R. 717, 722 (Bankr. S.D.N.Y. 2000) (citation omitted).

An accurate social security number is also material to the bankruptcy process. *U.S. v. Phillips*, 606 F.2d 884, 887 (9th Cir. 1979), *cert. denied*, 444 U.S. 1024 (1986) (accurate social security number material representation in a bankruptcy filing). In fact, short of criminal penalties, a discharge may be denied to a debtor who intentionally or even mistakenly uses a false or inaccurate social security number. *Tighe v. Valencia (In re Guadarrama)*, 284 B.R. 463, 473-474 (C.D. Cal. 2002); *see also Riccardo*, 248 B.R. at 724 (discharge will not be granted to debtor who uses false social security number mistakenly or intentionally).

Likewise, the use of a false or inaccurate social security number in a bankruptcy petition undermines the integrity of the fundamental objectives of the Bankruptcy Code and violates the oath made by the debtor in signing the petition. *Riccardo*, 248 B.R. at 722-724. Indeed, as the court aptly stated in *In re David*, 487 B.R. 843 (Bankr. S.D. Tex. 2013):

> [N]ondisclosure of the Debtor's . . . social security number corroded the integrity and fair administration of the bankruptcy process. . . . If deliberately using someone else's social security number . . . in filing a bankruptcy petition is not defiling the very temple of justice, then nothing is.

Id. at 873.

Fundamentally, the use of a false or inaccurate social security number is an abuse and manipulation of the bankruptcy process. As the court explained in *In re Johnson*, 1990 WL 10007396 (Bankr. S.D. Ga. 1990):

> This is the second bankruptcy proceeding brought by this debtor in two (2) years. While that fact alone is not indicative of a bad faith filing, that fact in conjunction with the use of different social security numbers in each filing evidences a lack of commitment to the spirit and purpose of Chapter 13, rehabilitation through repayment, and evidences an attempted manipulation of the bankruptcy process.

Id. at *3.

Here, the Debtor used two different social security numbers in multiple bankruptcy petitions. The social security number the Debtor identified as hers in the second Chapter 13 case is different from the social security number she identified as hers in the first and third Chapter 13 cases. In fact, the social security number the Debtor identified as hers in her second Chapter 13 case was used by a different individual (with the same last name) to file a Chapter 13 petition five years earlier.

The Debtor also failed to disclose that she identified different social security numbers when she filed her second and third Chapter 13 cases. When the Debtor filed her second Chapter 13 case she would have known that a different social security number was used in her first Chapter 13 case. Similarly, when the Debtor filed this (third) Chapter 13 case she would have known that she initially identified a different social security number in her second Chapter 13 case.

The Debtor's use of different social security numbers in multiple Chapter 13 cases is particularly troubling because the Debtor's use of two different social security numbers does not appear to have been accidental or inadvertent. Nor can the use of different social security numbers in multiple Chapter 13 cases be attributed to anyone other than the Debtor, *i.e.*, an attorney, an attorney's staff, or a petition preparer. The Debtor filed the petitions and social security statements in each of her three Chapter 13 cases as a pro se debtor. That means the Debtor personally completed each of her three Chapter 13 petitions and the documents filed with them, *i.e.*, the Official Form 121. The second Chapter 13 case is a further example of a knowing use of false or inaccurate social security numbers. Whereas the petition states that a social security

number ending in "7897" belongs to the Debtor, Official Form 121 states that the social security number ending in "9586" belongs to the Debtor.[6] Both, of course, cannot be true.

True, the Debtor amended the social security number in the second case. However, she did so only after an appearance at a continued § 341 meeting well over a month into the case. There was no amendment until that time. Thus, if not for the Debtor's appearance at the § 341 meeting, the court is not persuaded that the Debtor would have amended the social security number on her own volition.

In short, the Debtor's use of false or inaccurate social security numbers, and the failure to disclose the use of different numbers, is egregious conduct and a misrepresentation of a material fact made in disregard of the Debtor's oath and a manipulation of the Bankruptcy Code and Chapter 13 process. That conduct alone is bad faith and, thus, sufficient cause for dismissal with prejudice under § 1307(c).

Other Conduct Indicative of Bad Faith

In addition to use of a false or inaccurate social security numbers, in each Chapter 13 case the Debtor has been less than truthful. For example, the schedules the Debtor filed in her second Chapter 13 case and the schedules she filed in this (third) Chapter 13 case differ dramatically. The schedules filed in the second Chapter 13 case classified Nationstar (Deutsche) and Wells Fargo as unsecured creditors whereas schedules filed in the present Chapter 13 case now appear to classify both creditors as secured and unsecured.

The Chapter 13 plans filed in each of the Debtor's Chapter 13 cases have also all been largely blank, inaccurate in that they conflict with the schedules or uncontested proofs of claim, and misleading in that they omit secured creditors. All have also been patently unconfirmable.

The Debtor's repeated submission of blank, misleading, and inaccurate schedules and plans has caused secured creditors to incur significant attorney's fees to protect their interests and prevent the manipulation of their claims. It likely has also caused the Trustee to expend an inordinate amount of time and limited resources on a single debtor. Although perhaps not as egregious as potential criminal conduct or the misrepresentation of substantive and material facts associated with the use of false or inaccurate social security numbers, the Debtor's conduct is nonetheless inconsistent with her obligations under the Bankruptcy Code and Rules and a disregard for the bankruptcy and Chapter 13 process.

Conclusion as to Dismissal

Upon consideration of all of the foregoing, the court concludes that under the totality of the circumstances the Debtor has engaged in bad faith conduct and there is cause under § 1307(c) to dismiss this Chapter 13 case. The only remaining question is whether dismissal should be with prejudice.

The Bankruptcy Code provides for prejudicial relief in the form of a bar to filing a future bankruptcy case in certain situations. Section 109(g) provides that a debtor is ineligible to file a bankruptcy case for 180 days if "[a prior] case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case[.]" 11 U.S.C. § 109(g)(1). By the above-described conduct the Debtor has failed to appear before the court in the proper prosecution of this case (an all of her other Chapter 13 cases). Accordingly, the court concludes that dismissal of this Chapter 13 case with prejudice pursuant to § 109(g) is warranted.

For all the foregoing reasons, the court will issue an order as follows: **(1)** sustaining

[6]It is also interesting to note that only the last four numbers of the two social security numbers used by the Debtor differ. The first five numbers of both social security numbers are identical.

the objection filed by Deutsche (Nationstar) and dismissing this Chapter 13 case for cause under § 1307(c) with the dismissal to be with prejudice pursuant to § 109(g); **(2)** overruling as moot the other objections to confirmation of the Debtor's proposed Chapter 13 filed by the Trustee and Wells Fargo Bank; and **(3)** denying the Trustee's motion to dismiss as moot.

46. 16-28075-B-13 DENISE BATTS
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
12-22-16 [12]

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 deny without prejudice the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 9, 2016, due the delinquency in plan payments (case no. 15-20506, dkt. 58, 67). 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 states that the present case was filed in order to cure pre-petition arrears owed on her primary residence. The Debtor states that her situation has changed because she now works as a Lyft driver, which provides her with a total net income of $1,300.00 per month on top of her Social Security and contributions made to her from her son and boyfriend. However, the court is not persuaded that the present plan will succeed since the income from Lyft and contributions from Debtor's son and boyfriend may not be sufficiently certain or regular. In fact, there is no declaration or other evidence that the Debtor's son and boyfriend will continue to make contributions to the Debtor throughout the life of the plan. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

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

The motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

The court will enter an appropriate minute order.