

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: January 29, 2019

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

January 29, 2019 at 1:00 p.m.

1. [18-27000](#)-B-13 JORGE GONZALEZ ORDER TO SHOW CAUSE - FAILURE
Muoi Chea TO PAY FEES
1-10-19 [[25](#)]

Tentative Ruling

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

The court granted the Debtor permission to pay the filing fee in installments. Dkt. 8. The Debtor failed to pay the \$77.00 installment when due on January 7, 2019. Dkt. 25. While the delinquent installment was paid on January 14, 2019, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

January 29, 2019 at 1:00 p.m.

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2. [18-26605](#)-B-13 DEBRA THOMPSON
[JPJ](#)-1 Aubrey L. Jacobsen

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
12-12-18 [[22](#)]

No Ruling

3. [18-27809](#)-B-13 CHERI HOUGLAND
Mark W. Briden

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-10-19 [[18](#)]

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to debtor Cheri Houglan's failure to pay \$31.00 due December 27, 2018, when filing an Amended Verification and Master Address List. Dkts. 12, 18. The court's docket reflects that the default has not been cured.

THE COURT WILL PREPARE A MINUTE ORDER.

4. [18-26813](#)-B-13 ALLEN/NICOLE GAMBLE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-4-18 [[20](#)]

Tentative Ruling

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

The court granted the Debtors permission to pay the filing fee in installments. Dkt. 10. Debtors failed to pay the \$79.00 installment when due on November 29, 2018. Dkt. 20. While the delinquent installment was paid on December 4, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

5. [18-27028](#)-B-13 ROSITA MOLINA ORDER TO SHOW CAUSE - FAILURE
Thru #6 Peter G. Macaluso TO PAY FEES
12-12-18 [[18](#)]

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to debtor Rosita Molina's failure to pay \$79.00 due December 7, 2018. Dkt. 18. The court's docket reflects that the default has not been cured.

THE COURT WILL PREPARE A MINUTE ORDER.

6. [18-27028](#)-B-13 ROSITA MOLINA ORDER TO SHOW CAUSE - FAILURE
Peter G. Macaluso TO PAY FEES
1-11-19 [[24](#)]

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to debtor Rosita Molina's failure to pay \$77.00 due January 7, 2019. Dkt. 24. The court's docket reflects that the default has not been cured.

THE COURT WILL PREPARE A MINUTE ORDER.

7. [18-26330](#)-B-13 JOVANY GONZALEZ ESTRADA MOTION TO DISMISS CASE
[JPJ](#)-2 Mikalah R. Liviakis 1-4-19 [[22](#)]

No Ruling

8. [18-26630](#)-B-13 MICHAEL MULLINS
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-18 [[27](#)]

Tentative Ruling

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

The court granted the Debtor permission to pay the filing fee in installments. Dkt. 9. Debtor failed to pay the \$77.00 installment when due on December 26, 2018. Dkt. 27. While the delinquent installment was paid on January 4 2019, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE A MINUTE ORDER.

Tentative Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to conditionally deny the motion.

Trustee's Motion to Dismiss

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests that the case be dismissed because debtor Lyudmila Pokatilov ("Debtor") has not prosecuted this case since the hearing on Trustee's objection to confirmation on September 18, 2018. The court notes that the voluntary petition was filed June 22, 2018, and this case has been pending for approximately 7 months with no confirmed plan. Dkt. 1.

Debtor's Opposition

Debtor filed an opposition on January 24, 2019. Dkt. 41.

Debtor argues that the two objections sustained at the hearing on September 18, 2018. Dkt. 33. First, Debtor was jointly responsible for tax debt owed to the Internal Revenue Service and, based on the sale of real property in a related bankruptcy, this debt will largely be paid off in the other case. Debtor will propose a plan that provides for \$1,000.00 in tax debt to pay any remaining difference or interest and or penalties.

Second, the objection to ownership of real property commonly known as 560 Mt. Everest Dr., Sacramento, California has been resolved, and the estate now has an interest in the property.

Discussion

The court's decision is to conditionally deny the motion, provided that Debtor is not delinquent at the hearing, based on the representations of the Debtor on resolving Trustee's objections to plan confirmation from the prior hearing. If the Debtor is not current at the time of the hearing, the motion will be granted and the case dismissed.

Assuming Debtor is current, she 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. Further, Debtor must continue to make plan payments as proposed in the plan filed June 22, 2018. If the Debtor has not confirmed a plan within 60 days, or if Debtor does not timely make all plan payments before a plan is confirmed, the case will be dismissed on the Trustee's ex parte application.

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

10. [18-27339](#)-B-13 KENT DOUGHERTY
David Foyil

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-26-18 [[28](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to debtor Kent Dougherty's failure to pay \$79.00 due December 21, 2018. Dkt. 28. The court's docket reflects that the default was cured on January 3, 2019. The payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

11. [18-25541](#)-B-13 KARAPET ELBAKYAN
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-4-18 [[29](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to debtor Karapet Elbakyan's failure to pay \$77.00 due November 29, 2018. Dkt. 29. The court's docket reflects that the default was cured on December 11, 2018, and Debtor made an additional payment on January 2, 2019. The January payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

12. [18-27143](#)-B-13 TYRONE/REBECCA DAMON CONTINUED MOTION TO VALUE
[PGM](#)-1 Peter G. Macaluso COLLATERAL OF SAFE CREDIT UNION
12-1-18 [[14](#)]

No Ruling

The court will announce a decision on the record.

13. [18-26946](#)-B-7 JEFFERY HARRISON ORDER TO SHOW CAUSE - FAILURE
Thru #14 George T. Burke TO PAY FEES
12-7-18 [[19](#)]

Final Ruling

The court's decision is to discharge as moot the Order to Show Cause, as a notice of voluntary conversion was filed January 12, 2019. Dkt. 28.

THE COURT WILL PREPARE A MINUTE ORDER.

14. [18-26946](#)-B-7 JEFFERY HARRISON ORDER TO SHOW CAUSE - FAILURE
George T. Burke TO PAY FEES
1-7-19 [[24](#)]

Final Ruling

The court's decision is to discharge as moot the Order to Show Cause, as a notice of voluntary conversion was filed January 12, 2019. Dkt. 28.

THE COURT WILL PREPARE A MINUTE ORDER.

15. [18-27348](#)-B-13 APRIL TURNBULL
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-26-18 [[29](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to debtor April Turnbull's failure to pay \$79.00 due December 21, 2018. Dkt. 29. The court's docket reflects that the default was cured on January 3, 2019. The payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

16. [16-25154](#)-B-13 CRAIG/MARQUITA TOMASEK MOTION TO DISMISS CASE
[JPJ](#)-6 Mark Shmorgon 12-27-18 [[74](#)]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion and order the case dismissed.

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed the motion requesting dismissal on the following grounds.

First, debtors Craig and Marquita Tomasek ("Debtors") are delinquent \$280.00, or approximately 2 plan payments. This is a material default by the Debtors under the confirmed plan and is cause to dismiss under 11 U.S.C. § 1307(c)(6).

Second, Trustee has filed four prior Notices of Default and Application to Dismiss Case. While Debtors have cured each default by filing a modified plan or paying the delinquent amount, Debtors' failure to make plan payments in a timely manner is an unreasonable delay that is prejudicial to creditors, and is cause to dismiss under 11 U.S.C. § 1307(c)(1).

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

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion and order the case dismissed.

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed the motion requesting dismissal on the following grounds.

First, debtor Arlene Thigpen ("Debtor") is delinquent \$3,875.00, or approximately 1 plan payment. This is a material default by the Debtor under the confirmed plan and is cause to dismiss under 11 U.S.C. § 1307(c)(6).

Second, Trustee notes that the priority claim of the Internal Revenue Service was understated as \$25,000.00 in the confirmed plan, while the proof of claim filed shows a priority claim of \$59,247.88. *Compare* dkt. 5, p. 4, *and* POC 5-3, p. 3. The Notice of Filed Claims was filed on November 9, 2016 (dkt. 26), and Debtor did not object to the filed claims or file a modified plan by the relevant deadlines. Without the objection to claim or modified plan, the confirmed plan will take 60 months, which is 15 months longer than proposed in the plan. The failure to timely object to claims or file a modified plan is an unreasonable delay that is prejudicial to creditors, and is cause to dismiss under 11 U.S.C. § 1307(c)(1).

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

18. [18-27062](#)-B-13 ASHLEY SOLBERG CONTINUED OBJECTION TO
[JPJ-1](#) Matthew J. Gilbert CONFIRMATION OF PLAN BY JAN P.
Thru #19 JOHNSON AND/OR MOTION TO
DISMISS CASE
12-27-18 [[17](#)]

No Ruling

19. [18-27062](#)-B-13 ASHLEY SOLBERG CONTINUED MOTION TO VALUE
[MG-1](#) Matthew J. Gilbert COLLATERAL OF TRAVIS CREDIT
UNION
12-10-18 [[12](#)]

No Ruling

The court will announce a decision on the record.

20. [18-26564](#)-B-13 DESMAL MATTHEWS
[JPJ](#)-2 Pro Se

MOTION TO DISMISS CASE
12-13-18 [[32](#)]

No Ruling

21. [18-26664](#)-B-13 DEWAYNE DIXON
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-28-18 [[32](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to debtor Dewayne Dixon's failure to pay \$76.00 due December 26, 2018. Dkt. 32. The court's docket reflects that the default was cured on January 8, 2019, along with an additional payment that same day. The total payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

22. [18-25080](#)-B-13 MEGAN WILLIAMS
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-17-18 [[31](#)]

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to debtor Megan Williams's failure to pay \$73.00 due December 11, 2018. The court's docket reflects that the default has not been cured.

THE COURT WILL PREPARE A MINUTE ORDER.

23. [18-24188](#)-B-13 VINCENT/WENDY CHALK
[JPJ](#)-2 Jeffrey S. Ogilvie

MOTION TO DISMISS CASE
12-7-18 [[52](#)]

Final Ruling

Continued to February 5, 2019, at 1:00 p.m. to be heard in conjunction with the Debtors' motion to confirm their amended plan.

THE COURT WILL PREPARE A MINUTE ORDER.

24. [18-27288](#)-B-13 ROBERT/ALLISON KING
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-26-18 [[16](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to the failure of debtors Robert and Allison King's to pay \$79.00 due December 20, 2018. Dkt. 16. The court's docket reflects that the default was cured on January 3, 2019. The payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

25. [18-25410](#)-B-13 NEAL/LOURDES BASSETT CONTINUED MOTION TO CONFIRM
FF-2 Gary Ray Fraley PLAN
Thru #26 12-18-18 [[33](#)]

Tentative Ruling

This matter was continued from January 22, 2019, to be heard with line item #26.

Unless debtors Neal and Lourdes Bassett ("Debtors") can demonstrate at the hearing that they are current at the time of the continued hearing, the motion will be denied and the plan not confirmed.

Debtors served notice of the confirmation hearing on the Internal Revenue Service by filing a proof of service on January 22, 2019, and mailing notice to all 3 addresses required by Local Bankruptcy Rule 2002-1(c). Dkt. 45. The proof of service caption states that the hearing was already held on January 22, 2019. The documents served do not show that notice of the continued hearing was provided. *Id.* at p. 1.

THE COURT WILL PREPARE A MINUTE ORDER.

26. [18-25410](#)-B-13 NEAL/LOURDES BASSETT CONTINUED MOTION TO VALUE
FF-1 Gary Ray Fraley COLLATERAL OF SANTANDER
CONSUMER USA
12-18-18 [[38](#)]

No Ruling

The court will announce a decision on the record.

27. [17-20513](#)-B-13 BEVERLY HUNTER
[MJ-1](#) Dale A. Orthner

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
11-29-18 [[31](#)]

CHAMPION MORTGAGE COMPANY
VS.

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to conditionally continue this motion to March 5, 2019, at 1:00 p.m.

Motion for Relief from Stay

Champion Mortgage Company (dba Nationstar Mortgage LLC), its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay and the codebtor stay with respect to real property commonly known as 8830 Elm Avenue, Orangevale, California 95662 ("Property"). Movant has provided the Declaration of Donna Hamilton to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Hamilton Declaration states that the Debtor defaulted on her post-petition obligations to pay the 2017 Sacramento County taxes, due August 29, 2018, for a total of \$943.78. Dkt. 34, ¶ 12.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$315,854.61 as stated in Proof of Claim 5, filed by Creditor. The value of the Property is determined to be \$300,000.00 as stated in Schedule A filed by Debtor. Dkt. 1, p. 11.

Debtor's Opposition

Debtor filed an untimely memorandum of points and authorities in opposition on January 15, 2019. Dkt. 37. Debtor states that she filed the opposition "as [her] attorney Dale Orthner has failed, refused, and otherwise neglected to oppose this motion for [her]." Dkt. 37, ¶ 3. This constitutes good cause to consider opposition to the motion, as required by Local Bankruptcy Rule 9014-1(f)(1)(B). Debtor only argues that she would like to retain the house based on its sentimental value. Debtor is 87 years old, she purchased the Property with her husband in 1968, and she has lived at the Property for over 50 years. *Id.* at p.3.

Plan Confirmation

The court notes that a plan was confirmed on March 24, 2017. Dkt. 14. The plan provides for payments on Creditor's claim in Class 1. Dkt. 5, p. 2.

January 22, 2019 Hearing

The court continued this matter to January 29, 2019, at 1:00 p.m. to allow Debtor an opportunity to pay the delinquent taxes and file proof that payment was delivered to Movant.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

For Movant's request for relief from the codebtor stay, 11 U.S.C. § 1301(c) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that--

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

Because no co-debtor was listed in the petition or schedules filed by Debtor, this request does not appear proper and is denied. Dkt. 1, pp. 26 (no codebtors on Schedule H), 32 (Debtor is not married).

If the Debtor provides evidence of payment before or at the time of the hearing, the motion will be denied without prejudice. Otherwise, the hearing on the motion will be continued to March 5, 2019, at 1:00 p.m., and the Debtor shall have until March 5, 2019, to make the tax payment and file proof of payment with the court. The court finds that the Debtor's age and the length of time that the Debtor and her family have lived at the Property, when considered in the context of a motion for relief from the automatic stay based on a missed tax payment of less than \$1,000.00 owed not to the Creditor but to the county, are compelling circumstances and good cause that warrant the extended continuance of the hearing on Creditor's motion in order to provide the Debtor with an opportunity to cure her default. See 11 U.S.C. § 362(e).

No other or additional relief is granted by the court.

THE COURT WILL PREPARE A MINUTE ORDER.

28. [18-27132](#)-B-13 STUART KOPPLE
Pro Se

CONTINUED MOTION TO VALUE
COLLATERAL OF UNITED AUTO
CREDIT CORPORATION
11-27-18 [[10](#)]

No Ruling

The court will announce a decision on the record.

29. [18-25884](#)-B-13 LEON GRAY
[TLA](#)-2 Thomas L. Amberg

CONTINUED MOTION TO CONFIRM
PLAN
12-11-18 [[32](#)]

No Ruling

30. [18-27132](#)-B-13 STUART KOPPLE
[DPC-2](#) Pro Se
See Also #28

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
1-8-19 [[28](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

First, David Cusick, the prior Chapter 13 trustee ("Trustee"), notes that the social security number on the Statement of Social Security is incorrect. Trustee verified this by comparing it to the proof of social security provided by debtor Stuart Kopple ("Debtor") at the meeting of creditors.

Second, Trustee argues that Top Finance is misclassified as a Class 2 claim in the plan, while it appears to be a Class 2 claim subject to treatment under 11 U.S.C. § 506(a).

Third, the monthly dividend to Class 2 creditor United Auto Credit Corp. is less than the minimum \$15.00 per month required by Federal Rule of Bankruptcy Procedure 3010(b).

Fourth, the plan proposed by Debtor does not state a dividend to general unsecured creditors. Dkt. 16, p. 5.

Fifth, Debtor failed to provide Trustee with a tax transcript or a copy of his federal income tax return for the most recent pre-petition year he was required to file. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A) and Federal Rule of Bankruptcy Procedure 4002(b)(3).

Sixth, 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).

Seventh, feasibility of the plan depends on the granting of a motion to value collateral of United Auto Credit Corporation. Until the motion is granted, the plan does not comply with Local Bankruptcy Rule 3015-1(i) and may not be feasible under 11 U.S.C. § 1325(a)(6).

Eighth, Debtor did not list the creditor and a vehicle, described as a 2008 Cadillac SRX, on Schedule D (dkt. 13, p. 16), and did not list a creditor and the vehicle in the plan under Class 3 (dkt. 16, p. 4) despite admitting at the meeting of creditors that he plans to surrender the vehicle. Debtor has not complied with Section 3.09 of the plan.

Ninth, Debtor's budget of \$50.00 per month each for clothing and personal care products for a family of 5 is likely not feasible, and Trustee believes it is likely Debtor has other undisclosed expenses. Dkt. 13, p. 25. Further, Debtor listed two car payments totaling \$898.95, and Trustee cannot determine if these payments are for additional, undisclosed vehicles, or if these vehicles have been identified in the plan. Trustee asserts that Debtor has not carried his burden of demonstrating the plan is feasible under 11 U.S.C. § 1326(a)(6).

Tenth, Debtor failed to disclose the value of a "damage claim" on Schedule B, despite listing it on Schedule C. Also, Debtor did not identify any basic property, such as household goods and furnishings, electronics, computer, cell phone, or a retirement plan; Trustee doubts these statements, as Debtor listed a full-time job on Schedule I and four dependents on Schedule J. Dkt. 13, pp. 6-9, 22, 24. Further, Debtor claimed

exemptions under California Code of Civil Procedure § 703.140(b) and, despite testifying to being married at the meeting of creditors, has not filed a spousal waiver as required by § 703.140(a)(2). On these grounds, Trustee objects to based on the plan failing the liquidation analysis under 11 U.S.C. § 1325(a)(4).

The plan filed November 27, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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