UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 6, 2018 at 1:00 p.m.

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1. 17-27902-B-13 JPJ-1 — ROSEMARY SIMMONS, Richard L. Jare — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-5-18 [40]

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 grant the motion to dismiss case.

First, the plan modifies the claim of MT Bank (Lakeview Servicing), which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). The Nonstandard Provisions states that MT Bank (Lakeview Servicing) will not receive ongoing monthly contractual payments but will receive an "adequate protection" payment of $1,300.00 per month pending the approval of a loan modification.

Second, there is no evidence of the Debtor's son's ability or willingness to voluntarily contribute $1,500.00 per month to the Debtor's income and household. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan cannot be fully assessed for feasibility or effectively administered. The plan provides for "adequate protection" payments to MT Bank (Lakeview Servicing) as the supposed holder of the first deed of trust on real property located at 9560 Moss Hill Way, Sacramento, California. However, according to the Debtor's motion to impose automatic stay, the property was sold at a foreclosure sale. The Debtor no longer has an ownership interest in this property and has merely a possessory interest in the property and any payments to MT Bank (Lakeview Servicing) are invalid and improper.

Fourth, no alterations to the preprinted text are permitted pursuant to Section 1.03 of the form plan. The plan impermissibly changes all of the subsections, i.e., Subsection 1.01 was altered to Section 1, Subsection 1.02 was altered to Section 2, and so on.

Fifth, terms for the payment of Debtor's attorney's fees are unclear. At Section 2.B.5 (or what should be Section 3.05), it appears that the Debtor's attorney has selected to be paid the balance of his fees of $2,801.00 by both complying with Local Bankr. R. 2016-1(c) and by filing and serving a motion in accordance with 11 U.S.C. § 329 and 330. The Debtor's attorney may choose one or neither, but not both.

Sixth, the plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor's filing of the petition is not in good faith pursuant to 11 U.S.C. § 1325(a)(7). *See* dkts. 49, 50. Two previous Chapter 13 petitions were filed by the Debtor and dismissed in the one-year period prior to filing this case. *See* case nos. 16-28056, 17-26016. The Debtor has offered no explanation from which the court can conclude that her financial or personal circumstances have changed substantially, and

that the present case will be concluded with a confirmed plan that will be fully performed. Moreover, the Debtor has not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D) in light of her scheme to manufacture a codebtor stay by transferring a portion of her real property to her son the day before the scheduled trustee's sale.

The plan filed December 4, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Although the Debtor filed an amended plan on January 5, 2018, there is no indication that the amended plan was even served or set for hearing.

Because the plan is not confirmable and the court is not persuaded that the Debtor filed this bankruptcy case in good faith, the objection is sustained and the motion to dismiss is granted.

The court will enter an appropriate minute order.

2. 17-28002-B-13 AF-2 **Thru #4**
ERLINDA GIL
Arasto Farsad
MOTION TO CONVERT CASE TO CHAPTER 11
1-4-18 [24]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

Debtor's Motion of Convert Chapter 13 Case to Chapter 11 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. 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 11 proceeding.

This Motion has been filed by Erlinda Gil ("Debtor") to convert this case from one under Chapter 13 to one under Chapter 11. Pursuant to 11 U.S.C. § 1307(d), at any time before confirmation of a plan and after notice and a hearing, the court may convert a Chapter 13 case to a Chapter 11 case.

Here, Debtor has not confirmed a Chapter 13 plan pursuant to 11 U.S.C. § 1325, and the case has not been previously converted under 11 U.S.C. §§ 1112, 1208, or 706. Debtor states that she may not be eligible to proceed under Chapter 13 due to the debt limitations provided by 11 U.S.C. § 109(e).

Debtor complies with the requirements of 11 U.S.C. § 109(d) and, there being no opposition, the court will convert the case to Chapter 11.

The court will enter an appropriate minute order.

3. 17-28002-B-13 AF-4
ERLINDA GIL
Arasto Farsad
MOTION TO EMPLOY ARASTO FARSAD AS ATTORNEY
1-8-18 [38]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Application of Debtor for Order Under 28 U.S.C. § 327 Authorizing and Approving Employment of Farsad Law Office, P.C. as General Bankruptcy Counsel 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. 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 to employ.

Debtor seeks to employ Farsad Law Office, P.C. ("the Firm") as general bankruptcy counsel pursuant to Local Bankruptcy Rule 9014-1(f)(1) and 11 U.S.C. §§ 327(a), 328(a),

and 329(a). The Debtor argues that Counsel's appointment and retention is necessary to enable the Debtor to faithfully to continue to execute her duties as debtor-in-possession until the case is converted, dismissed, a Chapter 11 trustee appointed, or a plan confirmed. Debtor believes that the Firm is qualified to continue representing her in the Chapter 11 case despite not having represented other debtors in any Chapter 11 cases. The Firm's lead attorney, Arasto Farsad ("Counsel"), has been a practicing bankruptcy attorney in the Northern District, Eastern District and Central District of California since 2010 and successfully overseen hundreds of Chapter 7 and Chapter 13 cases. Counsel contends that the instant case is neither so complex nor daunting that Counsel would not be able to competently and diligently represent the Debtor. Debtor believes that Counsel possesses the requisite skill, experience, and integrity to competently represent Debtor.

Counsel testifies that the professional services the Firm will provide to the Debtor include, but are not limited to: advising the Debtor with respect to the powers an duties as Debtor-in-possession in the continued operation of the business and management of Debtor's property; taking necessary action to avoid any liens against Debtor's property; represent Debtor in consultations with creditors; reviewing proof of claims and negotiating with creditors; taking necessary action to stop foreclosure proceedings which may be in effect against any of Debtor's property; preparing applications, answers, order, reports, and other legal papers; preparing and representing Debtor at any hearing to approve the disclosure statement and to confirm a plan; assist Debtor in any manner relevant to review contractual obligations, asset collection, and dispositions; prepare documents relating to disposition of assets; advise Debtor on finance and finance related matters.

Counsel testifies he and the Firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor-in-possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Local Rule 2014-1 states that to insure public confidence in the integrity of the bankruptcy process, the verified statement that must accompany an Application for Employment of Professional Persons pursuant to Fed. R. Bankr. P. 2014(a) shall, after disclosure of any actual connections, close with the statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party-in- interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications for Employment which are not accompanied by a verified statement containing such a statement may be denied without prejudice.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declarations demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Farsad Law Office, P.C. as general bankruptcy counsel for the Debtor on the terms and conditions set forth in the motion and Declaration of Arasto Farsad, and subject to the modifications made herein below.

The application contemplates that three attorneys may provide services in this matter: Arasto Farsad, Kristina Pedroso, and Chi Dinh. All have the same billing rate at $300.00 per hour. Dkt. 38 at 6:6-7. Although $300.00 is not an unreasonable hourly

billing rate, the court has some concern with attorney Farsad's admitted lack of Chapter 11 experience. This is his first Chapter 11 case. Dkt. 38 at 3:13 ("Arasto Farsad, has not represented other Debtors in any Chapter 11 cases.").

The court also notes that attorney Pedroso was admitted to the California State Bar in 2013. She was only recently admitted to the bar of this court in December 2017. There is no evidence of her bankruptcy experience in general or her Chapter 11 experience in particular.

And although attorney Dinh appears to have been admitted to the California State Bar in 2010, there similarly is no evidence of her bankruptcy experience in general or her Chapter 11 experience in particular. Attorney Dinh also does not appear to be admitted to the bar of this court and therefore may not appear in the case unless and until admitted. *See* LBR 1001-1(c); Local Dist. Ct. Rule 108.

Therefore, based on the foregoing, the court orders the following modifications to counsel's employment:

(1) Attorney Farsad shall be employed at the initial rate of $250.00 per hour. If counsel demonstrates competence in this Chapter 11 case, counsel may make application for attorney's fees of up to $300.00 per hour.

(2) Attorney Pedroso shall be employed at the rate of $225.00 per hour. Attorney Pedroso may apply for a higher hourly rate upon a showing of Chapter 11 experience or evidence of additional bankruptcy experience.

(3) Attorney Dinh shall be employed at the rate of $225.00 per hour. Attorney Dinh may apply for a higher hourly rate upon a showing of Chapter 11 experience or evidence of additional bankruptcy experience. However, attorney Dinh shall not appear in this case unless and until admitted to the bar of this court. No compensation will be allowed for services provided by attorney Dinh prior to that admission.

(4) The court retains discretion under § 330 of the Bankruptcy Code to make any necessary adjustments to counsels' hourly rates, including disallowance if necessary.

The court will enter an appropriate minute order.

4. 17-28002-B-13 ERLINDA GIL — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1 Arasto Farsad — 12-27-17 [12]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The court entered an order on January 30, 2018, granting a stipulation to continue the hearing on the motion for in rem relief from automatic stay to no less than 30 days after February 6, 2018. The motion will be continued to March 13, 2018, at 1:00 p.m.

The court will enter an appropriate minute order.

5. 17-27707-B-13 ANTHONY SIPPIO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Lucas B. Garcia — 1-2-18 [40]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on 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)(B) is considered as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.

6.	17-26013-B-13 JPJ-3	DIANA EVANS Jonathan D. Matthews	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 1-3-18 [77]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

Trustee's Motion of 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)(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. 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, or in the alternative dismissed, based on the following grounds.

First, 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). The court sustained the Trustee's objection to confirmation on November 14, 2017, and to date the Debtor has not taken further action to confirm a plan.

Second, that Debtor is $1,500.00 delinquent in plan payments, which represents 3 plan payment. By the time this matter is heard, an additional plan payment in the amount of $500.00 will also be due. The Debtor has failed to make any plan payments since the petition was filed on September 9, 2017. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, based on the original filed Schedule C (filed 9/25/17), the amended Schedule A/B (filed 10/17/17), and the three attachments to Schedule A/B (filed 9/09/17, 9/27/17, and 10/17/17), the total value of the non-exempt equity in all real property, excluding Debtor's primary residence, is $193,540.00. This amount does not include any cost-of-sale or Chapter 7 Trustee Administrative Fee. With respect to Debtor's personal property, Debtor failed to list any interest in household goods ($1,200.00), electronics ($590.00), clothing ($3,000.00) and a US Bank checking account ($5.00).

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 has failed to prosecute this case, is delinquent in plan payments, and has non-exempt equity in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

7. 16-21514-B-13 CHERRONE PETERSON — MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso — 12-28-17 [115]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 28, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

8. 17-27414-B-13 PATRICIA GONSALVES MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Livakis 12-11-17 [14]

Tentative Ruling: The Motion to Confirm Debtor's 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)(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 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 plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since 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 monthly disposable income is $256.91 and the Debtor must pay no less than $15,414.60 to unsecured non-priority creditors. The plan will pay only $1,754.78 to unsecured non-priority creditors.

Second, the plan payment in the amount of $3,750.00 for months 5 to 8 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 $3,825.67. The plan does not comply with Section 5.2 of the mandatory form plan.

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

The court will enter an appropriate minute order.

9. 17-27815-B-13 ROBERT MOLDEN
JPJ-1 Candace Y. Brooks

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-8-18 [18]

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).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on January 9, 2018. The confirmation hearing for the amended plan is scheduled for February 20, 2018. The earlier plan filed November 30, 2017, is not confirmed.

The court will enter an appropriate minute order.

10. 17-27916-B-13 JPJ-1 **Thru #11**
SHANNON LAWRENCE
Matthew J. DeCaminada
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
1-8-18 [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 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).

The court's decision is to overrule the objection as moot.

The Debtor filed an amended plan on January 4, 2018. The confirmation hearing for the amended plan is scheduled for February 20, 2018. The earlier plan filed December 4, 2017, is not confirmed.

The court will enter an appropriate minute order.

11. 17-27916-B-13 MJD-1
SHANNON LAWRENCE
Matthew J. DeCaminada
MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
1-4-18 [13]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services 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)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services at $9,500.00.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Chevrolet Suburban ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 13 filed by Wells Fargo Bank, N.A., dba WFDS is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,042.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's

secured claim is determined to be in the amount of $9,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

12. 16-23919-B-13 TONI HERRERA — MOTION TO MODIFY PLAN
SLE-2 Steele Lanphier — 12-20-17 [58]

Tentative Ruling: The Motion to Confirm Second Modified Plan Dated December 20, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to dismiss the motion and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed a modified plan on January 26, 2018. The confirmation hearing for the modified plan is scheduled for March 13, 2018. The earlier plan filed December 20, 2017, as an exhibit to dkt. 58, is not confirmed.

The court will enter an appropriate minute order.

13. 17-27127-B-13 SHERWIN BRAMLETT
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF JOHN LYNCH
12-18-17 [35]

Tentative Ruling: This matter was continued from January 16, 2018, in light of the stipulation entered into between Debtor and creditor John Lynch. The Motion to Value Collateral of John Lynch 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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value collateral of John Lynch at $0.00.

Debtor's motion to value the secured claim of John Lynch ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3265 Sugarloaf Mountain Road, Loomis, California ("Property"). Debtor seeks to value the Property at a fair market value of $506,000.00 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). Debtor states that a first deed of trust held by Ocwen Loan Servicing is in the amount of $517,273.15.

The valuation of property that 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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by John Lynch is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting a Property valuation of $685,000.00 as of December 12, 2017. This valuation is supported by the Declaration of Martin Curle, a

licensed appraiser of 23 years. The appraisal is submitted as Exhibit B, Docket 47. Creditor asserts that its secured claim is $167,726.85 and that its unsecured claim is $17,200.34. These valuations are provided for in Claim No. 2-1.

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. 2-1 filed by John Lynch states a balance owed of $184,927.19 and a value of the Property at $685,000.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Creditor has also provided an appraisal; however, problematic with the appraisal is that it values the Property as of December 12, 2017. The Property must be valued as of the date the petition was filed. Nonetheless, the court is not persuaded by the Debtor's opinion of value.

Therefore, the Debtor's motion to value collateral is denied without prejudice.

The court will enter an appropriate minute order.

14. 17-26529-B-13 JOSE/MAGDALENA CARMONA — MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Livakis — 12-11-17 [41]

Tentative Ruling: The Motion to Confirm Debtor's [sic] 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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion to confirm with an addendum to the order confirming that provides for the terms as stipulated by Debtors and Deutsche Bank National Trust Company. *See* dkt. 51.

The amended plan dated December 11, 2017, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

15. 18-20129-B-13 MICHAEL/ESTHER SPEARMAN MOTION TO EXTEND AUTOMATIC STAY
EJS-1 Eric John Schwab 1-16-18 [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 Debtors, 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.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on October 21, 2017, after debtors failed to confirm a plan within 75 days of the date of entry of the order denying confirmation of Debtors' plan (case no. 16-27611, dkt. 52). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

The Debtors assert that they were unable to confirm a plan in the previous bankruptcy because Codebtor lost her job. Debtors contend that the present bankruptcy will succeed because Debtor has subsequently incorporated his security consulting business and obtained a long-term contract with Oracle Corporation. Additionally, Codebtor has gone back to work as a contract employee with her previous employer, Contra Costa County. Debtors state that these changed circumstances are now generating enough income to pay all creditors in full in the Chapter 13 plan.

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

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

The court will enter an appropriate minute order.

16. 17-22237-B-13 KEVONNA BROWN MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 12-21-17 [21]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 21, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 21, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 14-27938-B-13 TERRI COMBS MOTION TO MODIFY PLAN
MC-4 Muoi Chea 12-20-17 [68]

Tentative Ruling: The Motion to Confirm Third Modified 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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the correct amount of post-petition arrears owed to PNC Mortgage and Safe Credit Union.

First, the modified plan understates the post-petition arrears owed to PNC Mortgage in Class 1 at $2,516.00. The modified plan does not specify a cure of all the post-petition arrearage totaling $2,889.60 for months November 2015, May 2016, and May 2017. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Second, the modified plan understates the post-petition arrears owed to Safe Credit Union in Class 1 at $1,613.00. The modified plan does not specify a cure of all the post-petition arrearage totaling $1,999.76 for months November 2015, April 2016, May 2016, and May 2017. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Provided that the order confirming state the correct amount of post-petition arrears owed to PNC Mortgage and Safe Credit Union, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

18. 17-24940-B-13 ANTHONY SALCEDO
APN-1 Mohammad M. Mokarram

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
1-8-18 [18]

TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling: No appearance at the February 6, 2018, 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)(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 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 Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a2017 Toyota RAV4, VIN ending in 6145 (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of $2,694.00 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 $40,267.09 as stated in the Spooner Declaration. The Vehicle is a lease.

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).

Additionally, 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, 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 Motor Credit Corporation, 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.

19. 17-27940-B-13 DUSTIN EATON
JPJ-1 Dale A. Orthner
Thru #20

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-5-18 [18]

CASE DISMISSED: 1/31/18

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The case having been dismissed on January 31, 2018, the objection to confirmation and conditional motion to dismiss case are dismissed as moot.

The court will enter an appropriate minute order.

20. 17-27940-B-13 DUSTIN EATON
JPJ-2 Dale A. Orthner

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-5-18 [21]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The case having been dismissed on January 31, 2018, the objection to Debtor's claim of exemptions is dismissed as moot.

The court will enter an appropriate minute order.

21. 15-21742-B-13 MARCELLO/GEORGIA MARTINEZ MOTION TO MODIFY PLAN
MC-5 Muoi Chea 12-19-17 [81]

Tentative Ruling: The Motion to Confirm Third Modified 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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the correct amount of post-petition arrears owed to HSBC Bank/Caliber Home Loans, Inc. And Regional Acceptance Corporation. First, the modified plan understates the post-petition arrears owed to HSBC Bank/Caliber Home Loans, Inc. in Class 1 at $4,293.00. The modified plan does not specify a cure of all the post-petition arrearage totaling $5,114.74 for months June 2016, July 2016, October 2017, and November 2017. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Second, the modified plan understates the post-petition arrears owed to Regional Acceptance Corporation in Class 1 at $1,863.00. The modified plan does not specify a cure of all the post-petition arrearage totaling $2,312.40 for months February 2016, June 2016, July 2016, October 2017, and November 2017. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Provided that the order confirming state the correct amount of post-petition arrears owed to HSBC Bank/Caliber Home Loans, Inc. And Regional Acceptance Corporation, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

22. 17-27747-B-13 RONALD WITSCHI, JR.
JPJ-1 Lewis Phon

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-5-18 [24]

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 failed to disclose that he received a survivor's annuity/death benefit in 2016 in the amount of $2,225.07. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan is not proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Second, the Debtor failed to submit proof of his social security number to the Trustee at the meeting of creditors on January 4, 2018, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to February 1, 2018, at 8:30 a.m. to allow the Debtor to submit proof of his social security number to the Trustee.

The plan filed December 12, 2017, 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.

23. 17-20155-B-13 RUMMY SANDHU MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso 12-27-17 [89]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 27, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 27, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

24. 17-27762-B-13 JPJ-1 **Thru #26**
RICHARD MYHRE
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
1-8-18 [22]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Trustee's Objection to Confirmation of the Chapter 13 Plan is continued to March 6, 2018, at 1:00 p.m. to be heard in conjunction with Debtor's Motion to Value Collateral of JPMorgan Chase Bank, N.A.

The court will enter an appropriate minute order.

25. 17-27762-B-13 PGM-1
RICHARD MYHRE
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
1-5-18 [17]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

An order was entered on January 25, 2018, granting a stipulation to continue the hearing on Debtor's motion to value collateral of JPMorgan Chase Bank, N.A. The hearing on the motion to value is continued to March 6, 2018, at 1:00 p.m. Chase shall have until February 20, 2018, to file any opposition. Debtor shall have until February 27, 2018, to file any response.

The court will enter an appropriate minute order.

26. 17-27762-B-13 PGM-2
RICHARD MYHRE
Peter G. Macaluso
MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
1-16-18 [26]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to withdraw as attorney.

Peter G. Macaluso ("Movant"), attorney for Debtor, moves to withdraw as attorney because Debtor has made it clear that he is unhappy with how his case is being handled, communication has broken down, and Debtor is unwilling to follow Movant's advice going forward in this case. Movant believes that legal representation will be ineffective. Movant has received $2,000.00 for attorney's fees prior to the filing of this case. Pending in this case are a motion to value collateral of JPMorgan Chase Bank, N.A. and an objection to confirmation by the Trustee. *See* dkts. 17, 22.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall

continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." *American Economy Ins. Co. v. Herrera*, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting *Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

(A) In General.

> (1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.
>
> (2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

> (1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
>
> (2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or
>
> (3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

> (1) The client
>
> (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
>
> (b) seeks to pursue an illegal course of conduct, or
>
> (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
>
> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The Movant asserts that since the filing, it has become apparent that the Debtor is not confident in Movant's ability to represent him in this matter. Communication has broken down, Debtor is unwilling to follow Movant's legal advice, and Movant is unable to effectively serve as attorney. These are cause for permitting the Movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) & (f).

The court will permit the Movant's withdrawal from this bankruptcy case. The motion will be granted. The Movant shall mail Debtor his case file within seven (7) days of the hearing on this motion, at the last known address of the Debtor.

The court will enter an appropriate minute order.

27. 16-20763-B-13 LAWRENCE/CHYANNE MICALLEF MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 12-21-17 [52]

Tentative Ruling: The Motion to Confirm Modified Chapter 13 Plan Filed November 30, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 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 modified plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Wells Fargo Home Mortgage in Class 1. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Second, although the Debtors are current through December 2017 under the terms of the modified plan, the Debtors were not timely on payments for October, November, and December 2017. An additional plan payment of $5,475.00 is due on January 25, 2018. Unless this payment is received on or before January 25, 2018, the Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

28. 17-27364-B-13 DAVID SHELTON
JPJ-3 Marc Voisenat

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-2-18 [27]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Objection to Debtor's Claim of Exemptions, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

29. 16-22265-B-13 JUAN ACOSTA MOTION TO MODIFY PLAN
SDB-4 W. Scott deBie 12-21-17 [60]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation 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)(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 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, Debtor is delinquent to the Chapter 13 Trustee in the amount of $930.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $930.00 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 plan cannot be fully assessed for feasibility or effectively administered because the plan payments are unclear. The NonStandard Provisions propose monthly plan payments of $1,230.00 beginning December 2019 but do not specify a duration for these monthly plan payments.

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.

30. 17-27167-B-13 WILLIAM NADO — OBJECTION TO CONFIRMATION OF PLAN BY EDNA NADO
PSG-1 Peter G. Macaluso — 12-27-17 [24]
Thru #32

Tentative Ruling: Creditor Edna Nado's 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.

Objecting creditor Edna Nado was awarded domestic support obligations in the amount of $25,517.00 rendered by Solano County Superior Court (case no. FFL135981). The creditor has filed a timely proof of claim in which it asserts this unsecured priority claim. The plan must provide for payment of amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial order to pay such domestic support obligation. *See* 11 U.S.C. § 1325(a)(8). The plan must pay priority claims in full unless the debtor contributes all disposable income to a five-year plan. *See* 11 U.S.C. § 1322(a). Because it fails to provide for payment of this domestic support obligation, the plan cannot be confirmed.

The plan filed October 30, 2017, 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.

31. 17-27167-B-13 WILLIAM NADO — OBJECTION TO CONFIRMATION OF PLAN BY ATTORNEYWORX, LLC
PSG-2 Peter G. Macaluso — 12-6-17 [16]

Tentative Ruling: Objection of AttorneyWorx, LLC to Confirmation of Debtor's 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.

Objecting creditor AttorneyWorx, LLC dba CollectionWorx, assignee to Edna Nado, was awarded domestic support obligations in the amount of $25,517.00 rendered by Solano County Superior Court (case no. FFL135981). The creditor has filed a timely proof of claim in which it asserts this unsecured priority claim. The plan must provide for payment of amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial order to pay such domestic support obligation. *See* 11 U.S.C. § 1325(a)(8). The plan must pay priority claims in full unless the debtor contributes all disposable income to a five-year plan. *See* 11 U.S.C. § 1322(a). Because it fails to provide for payment of this domestic support obligation, the plan cannot be confirmed.

The plan filed October 30, 2017, 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.

32. 17-27167-B-13 WILLIAM NADO
RTD-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-11-18 [32]

SCHOOLS FINANCIAL CREDIT UNION VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for relief from stay.

Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Hyundai Sonata(the "Vehicle"). The moving party has provided the Declaration of Robin Boyce to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Boyce Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of $619.58 in post-petition payments past due. The Declaration also provides evidence that there is 1 pre-petition payment in default, with a pre-petition arrearage of $309.84.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $23,262.75, as stated in the Boyce Declaration, while the value of the Vehicle is determined to be $18,637.00, as stated in Schedules B and D filed by Debtor. The Boyce Declaration also states that the Debtor surrendered the Vehicle prior to the filing of the petition.

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).

Additionally, 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, 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 Schools Financial Credit Union , 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. 17-25371-B-13 SALLY ALLEN MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 12-15-17 [36]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated December 15, 2017, 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)(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 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 plan payments for the first 6 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 are as follows: months 1-3 $2,010.67; months 4-5 $2,021.15; month 6 $2,202.24. The plan does not comply with Section 5.2 of the mandatory form plan.

Second, Section 7.06 of the Nonstandard Provisions states, "Unsecured Priority Taxes will be paid in month 60." The Franchise Tax Board is the only unsecured priority creditor who has filed a claim in the amount of $423.77. Based on claims filed as of January 22, 2018, the secured creditors would be paid in full in approximately 53 months. The Debtor's Nonstandard Provisions would cause the Trustee an undue administrative burden to hold funds for FTB until month 60 and is contrary to the language contained under Section 5.02(c) of the December 1, 2017, Standard Plan. It also appears to be an unreasonable and unnecessary delay to withhold distribution from a creditor without any basis. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

34. 17-27572-B-13 JOHN WHITE
JPJ-1 Diana J. Cavanaugh
Thru #35

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-5-18 [55]

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, although the Debtor filed a plan on December 1, 2017, the Debtor failed to utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Form EDC-3-080, the standard form Chapter 13 plan effective December 1, 2017.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,550.00, which represents 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $4,550.00 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).

Third, the plan understates the amount of pre-petition arrears owed to Wells Fargo Bank, N.A. at $32,500.00. The proof of claim filed by Wells Fargo Bank, N.A. shows pre-petition arrears of $39,440.72. The plan will take approximately 74 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).

Fourth, feasibility depends on the granting of motions to avoid liens of: American Express Bank, FSB in the amount of $16,977.01; American Express Centurion Bank in the amount of $25,558.58; American Express Bank, FSB in the amount of $5,876.99; American Express Centurion Bank in the amount of $14,113.62; Negherbon Capital Management, LLC in the amount of $46,061.15; and 1357 North Main Street, LLC in the amount of $104,647.81. The motions to avoid liens were set for hearing on January 23, 2018, and continued to March 19, 2018, at 9:30 a.m. in light of 1357 North Main Street, LLC's opposition to the valuation of real property located at 616 E. N. Street, Benicia, California. *See* dkts. 75, 76, 77, 78, 79, 80.

The plan filed December 1, 2018, 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.

35. 17-27572-B-13 JOHN WHITE
MJ-1 Diana J. Cavanaugh

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
12-26-17 [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.

U.S. Bank, N.A. ("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 $39,440.72 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.

Though requested in the motion, Creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Creditor is not awarded any attorneys' fees.

The plan filed December 1, 2018, 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.

36. 17-25875-B-13 ROBERT/JENNIFER FINE — MOTION TO CONFIRM PLAN
DBL-1 Bruce Charles Dwiggins — 12-18-17 [29]

CASE DISMISSED: 1/25/18

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The case having been dismissed on January 25, 2018, the Motion to Confirm First Modified Plan Dated December 18, 2017, is dismissed as moot.

The court will enter an appropriate minute order.

37. 17-24480-B-13 RENEE MARTIN
Albert L. Boasberg

MOTION TO CONFIRM PLAN
1-22-18 [98]

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Motion Hearing Date to Confirm Plan 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). However, no proof of service was filed with the motion as required pursuant to Local Bankr. R. 9014-1(e). Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

38. 17-26588-B-13 JPJ-1 **Thru #39**
SOPHIE MAYCHROWITZ
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [23]

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 and deny the motion to dismiss case for reasons stated below and as supplemented at Item #39.

Feasibility depends on the granting of a motion to value collateral for Washington Mutual Bank. Washington Mutual Bank was assumed by JPMorgan Chase Bank, N.A. *See* dkt. 33, exh. 1. This seems to suggest that the JPMorgan collateral valued at Item #39 is the same Washington Mutual collateral referenced in Item #38, and that would also seem to suggest that if Item #39 is granted then Item #38 should be overruled. Since the motion to value is granted, this objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the motion to dismiss case is denied without prejudice. The plan filed October 3, 2017, is confirmed.

The court will enter an appropriate minute order.

39. 17-26588-B-13 PGM-1
SOPHIE MAYCHROWITZ
Peter G. Macaluso
CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
11-3-17 [17]

Tentative Ruling: The Motion to Value Collateral of JPMorgan Chase Bank, N.A. 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).

The court's decision is to grant the motion to value collateral of JPMorgan Chase Bank, N.A. at $0.00.

This matter was continued from December 5, 2017, to allow Debtor to determine whether the correct servicer and/or holder of the second deed of trust is Washington Mutual Bank or JPMorgan Chase Bank, N.A.

Debtor seeks to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor"), which assumed Washington Mutual Bank. Debtor is the co-owner of the subject real property commonly known as 609 Lincoln Road, Williams, California ("Property") with Gary Dixson, who has also filed for Chapter 13 relief (case no. 17-26589). As stated in the Declaration of Sophie Maychrowitz, Debtor seeks to value the Property at a fair market value of $240,000.00 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 either JPMorgan Chase Bank, N.A. or Washington Mutual Bank for the claim to be valued. Furthermore, the proof of claim deadline for all creditors (except governmental units) expired on January 31, 2018.

Discussion

Debtor's motion (dkt. 17, 2:7-10) states that Washington Mutual Bank was merged with JPMorgan Chase Bank, N.A. Debtor's reply (dkt. 32) states that JPMorgan is the current lien holder for the second deed of trust and that the motion was properly served upon JPMorgan. A Corporate Assignment of Deed of Trust is filed as an exhibit. Dkt. 33. This seems to suggest that the JPMorgan collateral valued at Item #39 is the same Washington Mutual collateral referenced in Item #38, and that would also seem to suggest that if Item #39 is granted then Item #38 should be overruled.

Particularly important is that neither creditor has filed any proof of claim asserting a second deed of trust against the Property prior to the claims bar deadline, which has since expired.

The first deed of trust secures a claim with a balance of approximately $322,264.66. The second deed of trust, held presumably by JPMorgan, secures a claim with a balance of approximately $35,145.00. 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.

40. 17-26589-B-13 GARY DIXSON
JPJ-1 Peter G. Macaluso
Thru #41

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [24]

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 for reasons stated below and as supplemented at Item #41 and determine the motion to dismiss at the hearing.

Feasibility depends on the granting of a motion to value collateral for Washington Mutual Bank. Washington Mutual Bank was assumed by JPMorgan Chase Bank, N.A. *See* dkt. 33, exh. 1. This seems to suggest that the JPMorgan collateral valued at Item #41 is the same Washington Mutual collateral referenced in Item #40, and that would also seem to suggest that if Item #41 is granted then Item #40 should be overruled. Since the motion to value is granted, this objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a) and the objection is overruled. The plan filed October 3, 2017, is confirmed.

As to the motion to dismiss, the Trustee stated at the December 5, 2017, hearing that the Debtor had not yet provided proof of social security number. The Debtor was required to provide proof of social security number by December 12, 2017, and if not the case would be dismissed. The issue of dismissal will be determined at the scheduled hearing and the case will be dismissed if the Debtor failed to provide proof of his social security number by December 12, 2017, unless the Debtor has an explanation for the failure to do so.

The court will enter an appropriate minute order.

41. 17-26589-B-13 GARY DIXSON
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
11-3-17 [18]

Tentative Ruling: The Motion to Value Collateral of JPMorgan Chase Bank, N.A. 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).

The court's decision is to grant the motion to value collateral of JPMorgan Chase Bank, N.A. at $0.00.

This matter was continued from December 5, 2017, to allow Debtor to determine whether the correct servicer and/or holder of the second deed of trust is Washington Mutual Bank or JPMorgan Chase Bank, N.A.

Debtor seeks to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor"), which assumed Washington Mutual Bank. Debtor is the co-owner of the subject real property commonly known as 609 Lincoln Road, Williams, California ("Property") with Sophie Maychrowitz, who has also filed for Chapter 13 relief (case no. 17-26588). As

stated in the Declaration of Gary Dixson, Debtor seeks to value the Property at a fair market value of $240,000.00 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 either JPMorgan Chase Bank, N.A. or Washington Mutual Bank for the claim to be valued. Furthermore, the proof of claim deadline for all creditors (except governmental units) expired on January 31, 2018.

Discussion

Debtor's motion (dkt. 17, 2:7-10) states that Washington Mutual Bank was merged with JPMorgan Chase Bank, N.A. Debtor's reply (dkt. 32) states that JPMorgan is the current lien holder for the second deed of trust and that the motion was properly served upon JPMorgan. A Corporate Assignment of Deed of Trust is filed as an exhibit. Dkt. 33. This seems to suggest that the JPMorgan collateral valued at Item #39 is the same Washington Mutual collateral referenced in Item #38, and that would also seem to suggest that if Item #39 is granted then Item #38 should be overruled.

Particularly important is that neither creditor has filed any proof of claim asserting a second deed of trust against the Property prior to the claims bar deadline, which has since expired.

The first deed of trust secures a claim with a balance of approximately $322,264.66. The second deed of trust, held presumably by JPMorgan, secures a claim with a balance of approximately $35,145.00. 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.

42. 17-26694-B-13 TAMARA GEREN — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 12-29-17 [34]
PLC-2 Peter L. Cianchetta

Final Ruling: No appearance at the February 6, 2018, hearing is required.

The Motion to Value Secured Portion of Claim of Wells Fargo Bank NA 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)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank NA at $2,500.00.

Debtor's motion to value the secured claim of Wells Fargo Bank NA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Ford Mustang ("Vehicle"). Based on the Declaration of Tamara T. Green, Debtor seeks to value the Vehicle at a replacement value of $2,500.00 as of the petition filing date. This is based on the fact that the Vehicle will need approximately $3,425.00 in repairs as stated in the Green Declaration. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Wells Fargo Bank, N.A. dba Wells Fargo Dealer is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in February 2006, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,864.33. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $2,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

43. 17-27894-B-13 ANTHONY BARCELLOS
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-8-18 [28]

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).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

The Debtor filed an amended plan on January 8, 2018. The confirmation hearing for the amended plan is scheduled for February 20, 2018. The earlier plan filed December 1, 2017, is not confirmed.

The court will enter an appropriate minute order.

44. 17-25899-B-13 CYB-5 — CARLOS/ROBIN ROBLES, Candace Y. Brooks — CONTINUED OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 5, 11-16-17 [78]

Tentative Ruling: The Objection to Claim Number 5 Filed by Wells Fargo Bank, N.A. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.

This matter was continued from December 19, 2017, to allow recently substituted counsel for Wells Fargo Bank, N.A. ("Creditor") to review the case and request updated payment history and detailed escrow analysis from Wells Fargo.

Carlos Robles and Robin Robles ("Debtors") request that the court disallow Claim No. 5. The claim is asserted to be secured in the amount of $227,871.99. Debtors assert that they are current with their payments to Creditor. Debtors contend that they have paid their September and October 2017 payments and that there is no escrow shortage. According to Debtors, if there is an escrow shortage, then their mortgage payments should have increased from the August 2017 payment of $2,397.00 and not decrease to $2,171.00. Debtors state that they have not received any statements from Creditor regarding a shortage in their escrow. They also provide a "print-out or screen shot" of their online account with Creditor showing that Creditor has not been applying Debtors' payments. Exh. C, Dkt. 81.

Opposition

Creditor filed a supplemental response on January 19, 2018, arguing that the proof of claim is accurate and that it includes a projected escrow shortage in accordance with Form 410A Proof of Claim Instructions. Instructions on the Form 410A of the Proof of Claim state: "Insert the Projected escrow shortage as of the date the bankruptcy petition was filed. The projected escrow shortage is the amount the claimant asserts should exist in the escrow account as of the petition date, less the amount actually held. The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column." At the time of filing of bankruptcy, the amount that was actually in the escrow account at the time of filing was $1,381.69, as shown in Column O of the ledger. $6,594.26 - $1,381.69 = $5,212.57. *See* dkt. 96, exh. 4. *See also* Declaration of Monica D. Cameron.

The matter will be determined at the scheduled hearing.

45. 18-20352-B-13 CRYSTAL JOHNSON
EJS-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 1-26-18 [11]

NORTH AVENUE APARTMENTS LP
VS.

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion for relief from stay.

North Avenue Apartments LP ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4045 May Street, Apt. 64, Sacramento, California (the "Property"). Movant has provided the Declaration of Victoria Pauli to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Pauli Declaration states that Movant is, and has been at all times, the legal owner of the property and that Debtor entered into a lease agreement on August 15, 2016. Movant seeks to proceed with the unlawful detainer action filed in state court on May 16, 2017.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on May 16, 2017, with a Notice to Quit served on May 9, 2017. Exhs. B, C, Dkt. 14.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

This case was also flied the day the order dismissing the Debtor's prior Chapter 13 case, no. 17-27202, was entered and as such is a bad faith filing in attempt to frustrate and prevent the state court eviction process. *See* 11 U.S.C. § 362(d)(1).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

Clerk is ordered to not dismiss this case except upon further order of this court.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.