UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 7, 2017 at 1:00 p.m.

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1. 16-24108-B-13 DAVID MARTIN — CONTINUED MOTION TO MODIFY PLAN
MOH-2 Michael O'Dowd Hays — 12-12-16 [56]
Thru #2

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

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

Trustee objects to confirmation of the plan on the grounds that it will take approximately 130 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The Debtor has filed a response asserting that the plan is confirmable provided that his objection to the claim of Matthew M. Lakota is sustained. That objection is heard at Item #2 and sustained. Claim No. 3 of Matthew M. Lakota is disallowed as being untimely filed.

The modified plan filed December 12, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

2. 16-24108-B-13 DAVID MARTIN — OBJECTION TO CLAIM OF MATTHEW M. LAKOTA, CLAIM NUMBER 3
MOH-3 Michael O'Dowd Hays — 1-3-17 [66]

Tentative Ruling: The objection to proof of claim has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to sustain the objection to Claim No. 3 of Matthew M. Lakota and the claim is disallowed in its entirety.

David Martin, the Chapter 13 Debtor ("Objector"), requests that the court disallow the

claim of Matthew M. Lakota ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $22,000.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 9, 2016. Dkt. 16. The Creditor's Proof of Claim was filed December 6, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court will enter an appropriate minute order.

3. 16-28009-B-13 LINDA DEMERY — MOTION TO VALUE COLLATERAL OF
DPR-1 David P. Ritzinger — INTERNAL REVENUE SERVICE
12-31-16 [16]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion to Value Collateral Securing the Claim of Internal Revenue Service has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Internal Revenue Service at $3,661.00.

Debtor's motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property as listed on Schedules A/B including household goods, electronics, clothing, shoes, accessories, costume jewelry, checking and savings accounts, and a security deposit ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $3,661.00 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. 1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The total dollar amount of the obligation represented by the financing agreement with Internal Revenue Service is $45,972.04 as stated in Claim No. 1. Debtor asserts that the price a retail merchant would charge for the Personal Property is $3,661.00 based on her opinion of the value of personal property and knowledge as to the amount of funds held in her financial accounts and other depositories on the date the petition was filed. 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 $3,661.00. *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.

4. 15-28611-B-13 MARY COBOS
JPJ-1 Muoi Chea

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
12-28-16 [28]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not 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 Debtor's delinquency in plan payments in the amount of $2,050.00, which represents approximately 2.28 plan payments. Before this matter is heard, an additional plan payment in the amount of $900.00 will also be due. The Movant further contends that the total value of non-exempt property in the estate is $94,287.29, consisting primarily of equity in the Debtor's real property that is not the Debtor's primary residence, and that conversion is in the best interest of creditors and the estate.

The Debtor has filed a response stating that it has filed a modified plan set for hearing on March 7, 2017, at 1:00 p.m. and that the plan will address the Movant's concerns and bring plan payments current.

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed a modified plan that is set for hearing on March 7, 2017, and is stated to resolve the Movant's issues. The motion is denied without prejudice and the case is not converted to a case under Chapter 7 nor dismissed.

The court will enter an appropriate minute order.

5.	12-39713-B-13 MAC-4	DONALD FLAVEL Marc A. Carpenter	CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 12-4-15 [68]

CONTINUED TO 3/14/17 AT 1:00 P.M.

Final Ruling: No appearance at the February 7, 2017, hearing is required. The Debtor filed a status report on January 29, 2017.

The court will enter an appropriate minute order.

6. 16-27714-B-13 SALVATORE/RENEE BEAZIE — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 1-12-17 [15]
Richard L. Jare

Tentative Ruling: Bank of America, N.A.'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). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $1,182.60 in pre-petition arrearages but has not yet filed a proof of claim and creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 19, 2016, is confirmed.

The court will enter an appropriate minute order.

7. 12-42115-B-13 IZABELA GIBALEWICZ
LDD-2 Linda D. Deos

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
12-6-16 [58]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

This matter is continued to February 21, 2017, at 1:00 p.m. per joint stipulation entered January 23, 2017.

The court will enter an appropriate minute order.

8. 16-26719-B-13 JTN-1 — HENRY NGUYEN AND DANA DINH — MOTION TO CONFIRM PLAN 12-9-16 [24]
Jasmin T. Nguyen

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

The court's decision is to confirm the first amended plan.

First, although the Trustee lacked sufficient funds to pay the post-contract installment to Class 1 second mortgage holder Bank of America for month 1, the month of November 2016, the Debtors state in their response that made a post-petition payment to Bank of America for the November 2016 mortgage. The Debtors provide evidence of a copy of a cashier's check in the amount of $366.00 to Bank of America for the November 2016 mortgage. Dkt. 45, p. 3.

Second, the Debtors have provided the Trustee with the Class 1 Checklist and Authorization to Release Information. The Debtors have complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, the Debtors have filed amended Schedules A, B, and C on January 19, 2017, to reflect the Internal Revenue Service's tax lien against Debtors' residence and personal property. With this tax lien, there is no non-exempt property in the estate and therefore creditors would not receive a higher distribution in a Chapter 7 proceeding.

Fourth, the Debtors filed an amended Calculation of Disposable Income (Form 122C-2) on January 19, 2017, to reflect payment of the secured tax lien to the IRS. With the additional monthly expenses, the Debtors' projected disposable income is negative and therefore unsecured creditors would receive $0.00. With no disposable income, the Debtors' amended plan complies with 11 U.S.C. § 1325(a)(4).

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

The court will enter an appropriate minute order.

9.	13-22923-B-13 PGM-10	RUDY HEURTELOU AND WENDY LAU Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S) 1-6-17 [213]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 170. Applicant now seeks additional compensation in the amount of $2,355.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 217.

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

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Chapter 13 Trustee would file two motions to modify plan, which resulted in Movant having to meet with Debtors, gather additional documentation, file objections, appear at the hearings on the Trustee's motion to modify, and ultimately enter into a stipulation with the Trustee. With the modifications below, the court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Counsel's time is billed in irregular six-minute and quarter-hour increments. The quarter-hour increments are a problem.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133, *17 (N.D. Cal. 2011) (court reduced requested fees for billing in quarter-hour increments because use of such billing likely overstated the number of hours actually worked); *Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358, *6 (S.D. Ala. 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes).

Here, counsel's billing records include seven time entries billed in quarter-hour increments totaling 1.75 hours (5/21/14, 07/08/14, 10/10/14, 3/31/15, 4/20/15, 4/12/16, 10/26/16). Those entries generally consist of receiving and reviewing documents. The court does not believe that it takes fifteen minutes to receive and review documents. The court will allow .10 for each quarter-hour entry which is a reduction of 1.05 hours and a corresponding deduction of $315.00.

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

Additional Fees	$2,355.00
Less 1.05 hours	$ 315.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

10. 16-27724-B-13 JONNELL DEEN-CHASE
JPJ-1 Peter G. Macaluso
Thru #11

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-12-17 [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 for reasons stated at Item #11 and conditionally deny the motion to dismiss.

The plan filed December 13, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

11. 16-27724-B-13 JONNELL DEEN-CHASE
PGM-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-20-16 [33]

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed on December 13, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan does not specify a cure of the post-petition arrearage owed to Seterus, Inc. in Class 1 for the month of December 2016, including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee cannot comply with Section 2.08(b) of the plan.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(9). The proof of claim filed by Internal Revenue Service on December 20, 2016, claim number 2-2, shows that the Debtor has not filed an income tax return for the year 2014.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. This is based on the Trustee's preliminary investigation that the value of real property located at 8431 Dartford Drive, Sacramento, California is greater than the value listed on Debtor's Schedule A/B. At the value according to the Trustee's preliminary investigation, the total amount of non-exempt property in the estate is $8,000.00. The total amount that will be paid to unsecured creditors is $0.00. At the meeting of creditors, the Trustee had requested that the Debtor provide the Trustee with a professional appraisal or other evidence to support her value. To date, nothing has been provided by the Debtor

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.

12.	16-28029-B-13 JPJ-1	BEVERLY UPCHURCH-ROBINSON Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-12-17 [22]

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.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on December 28, 2016. However, the Debtor still needs to file a motion to confirm the amended plan and serve it on all creditors according to the Local Bankruptcy Rules.

Nonetheless, the earlier plan filed December 5, 2016, is not confirmed.

The court will enter an appropriate minute order.

13. 16-28129-B-13 JERRY/JOANNE BENNETT
PPR-1 Stephen N. Murphy

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
12-23-16 [41]

CONTINUED TO 2/14/17 AT 1:00 P.M. TO BE HEARD ON THE SCHEDULED CONFIRMATION HEARING DATE AS STATED ON THE NOTICE OF CHAPTER 13 BANKRUPTCY CASE (DKT. 49) AND IN CONJUNCTION WITH TRUSTEE'S OBJECTION TO CONFIRMATION AND CONDITIONAL MOTION TO DISMISS CASE (DKT. 80).

Final Ruling: No appearance at the February 7, 2017, hearing is required.

14. 13-24835-B-13 SUZANNE ERICKSON MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso 12-22-16 [70]

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

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

First, the total amount the Debtor has paid into the plan through December 2016 is $58,640.04. The plan overstates the total amount the Debtor has paid into the plan through December 2016.

Second, the plan cannot be fully assessed for feasibility. Although the Debtor has filed as an exhibit amended Schedule J to amend the exhibit of Schedule J filed on October 31, 2016, there is no separate amended Schedule J that appears on the court's docket. The court cannot determine the actual amount of Debtor's monthly net income.

Third, the plan term of the modified plan incorrectly states a duration of 60 months when it should be 49 months.

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

The court will enter an appropriate minute order.

15. 16-25436-B-13 MARILYN OVERHOFF MOTION TO CONFIRM PLAN
DBJ-2 Douglas B. Jacobs 12-14-16 [55]

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

16. 14-27938-B-13 TERRI COMBS MOTION TO MODIFY PLAN
MC-3 Muoi Chea 12-21-16 [55]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion to Confirm Second Modified Chapter 13 Plan 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court'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, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 11-39148-B-13 DAVID/DOROTHY JONES — CONTINUED MOTION TO VALUE COLLATERAL OF MOUNTAINVIEW CAPITAL HOLDINGS
SDB-8 W. Scott de Bie — 11-1-16 [83]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

Debtors' Motion for Order Valuing Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to value real property located at 916 Beechwood Circle, Suisun City, California, at $187,000.00 as of the date the petition was filed.

This matter was continued from December 13, 2016. The Debtor was required to file by January 20, 2017, a declaration stating that Mountainview Capital Holdings is the holder of the second deed of trust and confirmation by Mountainview Capital Holdings stating the same.

The Declaration of Susan E. Bow was filed on January 18, 2017, stating that Promor Investments, LLC is the wholly owned subsidiary of MountainView Capital Holdings as supported by Exhibit D, Docket 107. The declaration further states that Promor Investments has been properly noticed of the motion to value and does not oppose the motion. Since the Debtors have completed their Chapter 13 plan, it is the intention of Promor Investments, LLC to reconvey the deed of trust to Debtors.

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.

18. 16-27849-B-13 JOSE ORTIZ-MORALES — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Steele Lanphier — 1-18-17 [24]

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

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

First, the Debtor has not complied with 11 U.S.C. § 521(a)(3) since the Debtor has not amended #4 of the Statement of Financial Affairs as requested by the Trustee. The Debtor has not listed the correct year-to-date income amounts for himself as well as his non-filing spouse.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(1) and (3) since the Debtor's projected monthly net income is not being applied to make payments to unsecured creditors. Debtor's monthly net income under Line #23c of Schedule J is $174.00. However, Debtor's plan payment is only $100.00 per month and Debtor proposes a 0% dividend to general unsecured creditors.

Third, the Debtor is delinquent to the Trustee in the amount of $100.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $100.00 will also be due. The Debtor does not appear to be able to make plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

19. 16-22950-B-13 JOYCELYN/FRANCISCUS VAN HOOF — MOTION TO MODIFY PLAN
PGM-2 — 12-29-16 [44]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 29, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the following issues are resolved.

First, the Debtors have paid a total of $8,670.00 to the Trustee through December 2016. The Debtors shall properly account for all payments made to the Trustee to date.

Second, the Debtors provide as evidence a correspondence between their attorney and Wells Fargo Bank, N.A. to support the additional treatment of Wells Fargo with a second entry in Class 2 in the amount of $1,621.24 and the additional treatment of Wells Fargo in Class 4 with monthly payments of $159.10 made directly by the Debtors for an "impound account commencing January 2017." According to Debtors, Wells Fargo is to file a post-petition expense claim to support the inclusion of the post-petition impound in the proposed plan.

Provided that the aforementioned issues are resolved, the 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.

20. 16-26552-B-13 WALTER GRAMPS MOTION TO CONFIRM PLAN
MOH-1 Michael O'Dowd Hays 12-16-16 [19]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Debtor's Motion to Confirm Amended Chapter 13 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on December 16, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

21. 17-20155-B-13 RUMMY SANDHU MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 1-18-17 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 8, 2016, after Debtor failed to make plan payments (case no. 14-32503, dkt. 91). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the previous plan was filed primarily in order to cure pre-petition arrears due on her primary residence. Debtor states that she has sufficient income from her stable employment as a director of AEI Consultants, where she has been employed for eight years, and from monthly contributions of $500.00 from her children's father. The Debtor states in her declaration that this case differs from the prior bankruptcy because in the prior case her significant other had a kidney transplant causing an additional financial burden on the Debtor. The Debtor states that her situation has changed because she has created a financial plan that she intends to follow and that she will not fall behind on plan payments presumably because her significant other's medical issue and procedure are resolved.

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

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

The court will enter an appropriate minute order.

22. 16-28058-B-13 CASEY HONSA MOTION TO CONFIRM PLAN
SNM-2 Stephen N. Murphy 12-20-16 [13]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion to Confirm Chapter 13 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on December 20, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

23. 13-33466-B-13 MICHAEL JORDAN
BLG-3 Chad M. Johnson
Thru #24

MOTION TO AVOID LIEN OF PRECISION RECOVERY ANALYTICS, INC.
1-23-17 [34]

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Precision Recovery Analytics, Inc. ("Creditor") against the Debtor's property commonly known as 309 Roundtree Court, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,550.84. An abstract of judgment was issued by Sacramento Superior Court on April 15, 2011, which encumbers the Property. All other liens recorded against the Property total $78,810.29 (from a first deed of trust and an assignment of lien).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $81,535.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,610.98 on Schedule C.

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

The court will enter an appropriate minute order.

24. 13-33466-B-13 MICHAEL JORDAN
BLG-4 Chad M. Johnson

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
1-23-17 [38]

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against the Debtor's property commonly known as 309 Roundtree Court, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,0104.93.

An abstract of judgment was issued by Sacramento Superior Court on August 5, 2011, which encumbers the Property. All other liens recorded against the Property total $81,361.13 (from a first deed of trust, an assignment of lien, and the senior judicial lien of Precision Recovery Analytics, Inc.).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $81,535.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,610.98 on Schedule C.

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

The court will enter an appropriate minute order.

25. 16-24973-B-13 MARTIN/ANNETTE SNEZEK — MOTION TO CONFIRM PLAN
LAN-2 Steele Lanphier — 12-27-16 [71]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion to Confirm Amended Chapter 13 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on December 27, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

26. 16-28074-B-13 EDITH INGRAM
LHL-1 Chinonye Ugorji

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-18-17 [16]

CIT BANK, N.A. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Automatic Stay 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.

OneWest Bank, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8021 Maybelline Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Laurie Howell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Howell Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on November 18, 2016. Exh. A, Dkt. 19.

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 has provided a properly authenticated/certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. A, Dkt. 19. 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

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.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

27. 11-25279-B-13 HANNAH PLETZ
PGM-1 Peter G. Macaluso

MOTION FOR ORDER TO SHOW CAUSE AND/OR MOTION FOR CONTEMPT
12-30-16 [56]

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

The court's decision is to deny the motion for contempt with prejudice.

The Debtor asks the court to hold Ocwen Loan Servicing, LLC and JP Morgan Chase & Co., successors to GMAC Mortgage, LLC, ("Creditors") in contempt for violating the discharge injunction. The Debtor filed for Chapter 13 relief on March 2, 2011. On April 4, 2011, GMAC had filed proof of claim number 3 stating post-petition arrears of $8,324.57 and on-going monthly payments of $1,111.77. The ongoing monthly installments increased and decreased each year thereafter before the claim was finally transferred to Ocwen Loan Servicing, LLC on March 27, 2013. The ongoing mortgage payment was finally increased to $1,115.49 on February 26, 2014.

Background

Debtor confirmed her chapter 13 plan on May 25, 2011. [Dkt. 21]. Creditor's predecessor did not object to confirmation of the plan. Debtor completed her plan payments on or about October 5, 2015 [dkt. 33], and on October 30, 2015, the Trustee filed a notice of final cure payment. [Dkt. 35].

Creditor filed a response to the notice of final cure payment on November 16, 2015, which appears on the docket as "doc." The response states that "Secured Creditor agrees that the amount required to cure the default in Proof of Claim #3 has been paid in full." [doc. 2:3-4]. It also states that the "Debtor is due for the September 1, 2015 and ongoing monthly mortgage payments totaling $3,346.47." [*Id.* 2:6-7]. Creditor served its response on the Debtor, the Trustee, and C. Anthony Hughes as the Debtor's then attorney of record.[1] [Dkt. 38].

The Trustee filed a notice of final report and account on November 18, 2015 [dkt. 39], and an order approving that final report an account was entered on December 24, 2015. [Dkt. 45]. The Debtor's discharge was entered on January 15, 2016 [dkt.48], and this case was closed on January 29, 2016. [Dkt. 50].

The case was subsequently reopened on September 12, 2016, [dkt. 53], and the present contempt motion was filed on December 30, 2016. [Dkt. 56]. Creditor opposed the motion on January 17, 2017. [Dkt. 64]. No reply was timely filed.

For the reasons explained below, the Debtor's motion to hold Creditor in contempt for violation of the discharge injunction of 11 U.S.C. § 524(a) will be denied with prejudice in its entirety.

Discussion

The Debtor's motion is a fugitive document because it is not filed by the Debtor's attorney of record. The substitution which purported to replace Mr. Hughes with Mr. Macaluso as the attorney of record in this case is not signed by the client, i.e., the Debtor, which means it is defective and thereby ineffective to cause a substitution of

[1] A substitution of attorney which purported to substitute Peter G. Macaluso for the Debtor's then attorney of record, C. Anthony Hughes, was filed on August 9, 2015. [Dkt. 32]. The substitution is not signed by the Debtor. There also is no order on the docket approving the substitution.

attorneys. *See* LBR 2017-1(h). The absence of the Debtor's signature on the substitution likely explains the absence of an order approving the substitution. With a defective (and thereby ineffective) substitution and no order approving it, Mr. Hughes remains the attorney of record in this case. *See* LBR 2017-1(e). In sum, the Debtor's motion is procedurally defective.

The Debtor's motion is also substantively defective and, therefore, would still be denied even if the purported substitution of attorneys was somehow effective and even if Mr. Macaluso is now somehow the Debtor's attorney of record in this case. In short, the court agrees with Creditor. As the court explained in *In re Park*, 532 B.R. 392 (M.D. Fla. 2015):

> Section 1328(a)(1) specifically provides that a debt provided for under § 1322(b)(5)—which permits the curing of arrearages and the maintenance of payments on long term debt—is excepted from a debtor's Chapter 13 discharge. In other words, if a debtor's plan provides for the cure of any default and maintenance of payments on long term debt, whether secured or unsecured, the debtor is not discharged from that debt.

Id. at 395. Thus, § 1328(a)(1) overrides § 524(a) for debts treated under § 1322(b)(5). *In re Padilla*, 389 B.R. 409, 419 (Bankr. E.D. Pa. 2008) ("Therefore, the text of the Code makes clear that a discharge granted under § 524(a) sets forth the effect of a chapter 13 discharge, except to the extent that § 524(a) is overridden by § 1328(a).").

Here, the Debtor's confirmed plan provided for Creditor's secured claim in Class 1 and thereby treatment of that long-term secured debt (both as to a cure of arrears and ongoing maintenance payments) as contemplated under § 1322(b)(5). Thus, by operation of § 1328(a)(1) that long-term secured debt was expressly excepted from the discharge the Debtor received on January 15, 2016. It follows then that Creditor could not have violated the Debtor's discharge rights under § 524(a) when it thereafter attempted to collect the unpaid amount owing on the long-term secured debt as stated in Creditor's response to the final cure payment notice.

It also follows that Creditor properly preserved its right to collect the amount stated in its response to the final cure payment notice. That notice was filed and docketed in the manner required by Bankruptcy Rule 3002.1(g). It was also properly served on the Debtor, the Trustee, and Mr. Hughes as the Debtor's then and only attorney of record, again, as required by Bankruptcy Rule 3002.1(g). The Debtor failed to dispute or otherwise contest the amount Creditor claimed due in its response according to the procedure and within the time required by Bankruptcy Rule 3002.1(h).

Therefore, for all the foregoing reasons, the Debtor's motion is denied with prejudice in its entirety.

The court will enter an appropriate minute order.

28. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2188
FRESHKO PRODUCE SERVICES, INC.
V. MAYER
Thru #29

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
9-23-15 [1]

CONTINUED TO 2/14/17 AT 1:00 P.M.

Final Ruling: No appearance at the February 7, 2017, hearing is required.

29. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2188 RJR-2
FRESHKO PRODUCE SERVICES, INC.
V. MAYER

CONTINUED MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION OF CLAIMS AGAINST DEFENDANT
11-30-16 [47]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

Plaintiff Freshko Produce Services Inc.'s Motion for Summary Judgment or Alternatively For Summary Adjudication of Claims Against Defendant has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the Freshko Produce Services, Inc.'s motion for summary judgment and grant its motion for reconsideration of its claim as a priority secured PACA trust claim.

Introduction

Presently before the court is a motion for summary judgment filed by Plaintiff Freshko Produce Services, Inc. The motion is opposed by defendant Ashwani Mayer. Defendant's co-debtor in the underlying chapter 13 case no. 15-25582 captioned *In re Ashwani Kumar Mayer and Pooja Verma*, Pooja Verma, is not a defendant in this adversary proceeding.

The complaint in this adversary proceeding was filed on September 23, 2015. It alleges two claims for relief. The first is a claim under 11 U.S.C. § 523(a)(4) which excepts from discharge any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." The second is a claim for attorney's fees, finance charges consisting of pre-judgment interest and expenses, and post-judgment interest.

Defendant was served with the complaint and summons on September 25, 2015. Defendant filed an answer and a third-party complaint on October 24, 2015. The third-party complaint was dismissed on May 26, 2016.

Plaintiff filed the present motion on November 30, 2016. Defendant opposed it on December 26, 2016, and plaintiff replied on December 29, 2016. The court has reviewed and considered the motion, opposition, reply, and all related exhibits and declarations. The motion was initially heard on January 10, 2017, at which time appearances were noted on the record and the matter continued to February 7, 2017, for a decision.

The present motion is captioned as one for summary judgment. However, it also includes a request for reconsideration and re-characterization of plaintiff's claim in the underlying chapter 13 case. Therefore, the court will construe plaintiff's motion as one brought under Federal Rule of Civil Procedure 56 (applicable by Federal Rule of

Bankruptcy Procedure ("Bankruptcy Rule")) 7056 and also as one brought under § 502(j) and Bankruptcy Rule 3008. *U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) ("The moving party's label for its motion is not controlling. Rather, the court will construe it, however styled, to be the type proper for relief requested."); *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015) (stating that "the court must construe motions so as to provide just, speedy, and inexpensive determination of every case and proceeding" and may re-designate as necessary).[1]

For the reasons explained below, the motion for summary judgment will be denied and the motion for reconsideration will be granted.

Background

Plaintiff is a produce seller. In a series of transactions between September 24, 2014, and December 8, 2014, plaintiff sold and shipped approximately $33,268.60 in perishable agricultural commerce to A.L.L. Groups, Inc., dba Vic's Discount Market dba Vic's Market ("AGI"). Defendant was the sole officer, director, and shareholder of AGI. In that capacity, defendant controlled AGI's operations and decisions.

Plaintiff asserts - and the court previously determined - that as the sole principal who controlled AGI the defendant is secondarily-liable as a trustee of a statutory trust created under the Perishable Agricultural Commodities Act [7 U.S.C. § 499e] ("PACA"). Plaintiff further asserts that defendant breached his fiduciary duties as a trustee of that PACA trust by diverting PACA trust assets to himself without first paying plaintiff for produce plaintiff sold and shipped to AGI. Plaintiff maintains those actions amount to a defalcation by the defendant in a fiduciary capacity within the meaning of § 523(a)(4).

On August 31, 2015, plaintiff filed a $49,979.54 proof of claim in the debtor' underlying chapter 13 case.[2] That proof of claim asserted a secured/priority PACA trust claim. Without any change to the amount, plaintiff filed an amended proof of claim on November 12, 2015, again asserting a secured/priority PACA trust claim.

The debtors objected to plaintiff's proof of claim on December 15, 2015, and on January 27, 2016, plaintiff replied to the debtors' objection. A hearing on the claim objection was held on February 3, 2016. Following that hearing the court filed Civil Minutes which explained the basis of its decision to overrule in part and sustain in part the debtors' objection to plaintiff's claim. An order consistent with those Civil Minutes was entered two days later on February 5, 2016.

To the extent the debtors objected to plaintiff's claim on the basis that plaintiff failed to provide the statutory notice required to preserve its PACA rights, the objection was overruled. The court overruled that aspect of the objection based on defendant's admissions of allegations in this adversary proceeding that plaintiff provided the proper PACA notice. The court treated defendant's admissions as judicial admissions.

To the extent the debtors objected to the characterization of plaintiff's PACA trust claim as a secured/priority claim, the objection was sustained. Allegations in a related district court complaint that defendant admitted by default established defendant's control over AGI as its sole principal and were sufficient to render

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[1]The debtors' chapter 13 plan was confirmed on October 26, 2016. However, "[c]ase law confirms that bankruptcy courts have wide discretion in determining what will constitute adequate 'cause' for reconsideration of claims, and that such reconsideration can occur even after confirmation of a [chapter 13] plan." *In re Zieder*, 263 B.R. 114, 117 (Bankr. D. Ariz. 2001) (citations omitted).

[2]Docket nos. 71 and 74 state that plaintiff's proof of claim was initially filed on "August 13, 2015." Both documents are amended to reflect the correct filing date of "August 31, 2015."

defendant secondarily-liable as a PACA trustee. Those admitted allegations also permitted the court to conclude that as a secondarily-liable PACA trustee defendant diverted PACA trust assets to himself. However, due to the absence of evidence that defendant diverted PACA trust assets to himself in a personal (as opposed to a representative) capacity the court followed *In re Ozcelik*, 267 B.R. 485 (Bankr. D. Mass. 2001), sustained the debtors' objection, and characterized plaintiff's PACA trust claim as a general unsecured claim in the underlying chapter 13 case.[3]

The additional evidence that plaintiff has now produced with its summary judgment motion answers questions left unanswered at the claim objection stage. Defendant's deposition testimony and interrogatory answers confirm the extent of defendant's control over AGI sufficient to make him a secondarily-liable PACA trust trustee and also confirm that in that capacity defendant diverted PACA trust assets to himself. That evidence also establishes that defendant diverted those PACA trust assets to himself in a personal capacity in the form of a salary that defendant paid himself from a single Wells Fargo account that consisted of commingled PACA proceeds and non-PACA rental income.

Defendant states he paid himself a salary using only business rental income and not PACA proceeds from that commingled account. But even if that's true, as explained below, the business rental income in the commingled Wells Fargo account was nevertheless a PACA trust asset.

Discussion

Summary Judgment

Applicable here as alleged in the complaint, § 523(a)(4) bars the discharge of debts arising from ". . .defalcation while acting in a fiduciary capacity[.]" 11 U.S.C. § 523(a)(4). The elements of this § 523(a)(4) non-dischargeability claim are: (1) an express or statutory trust; (2) the debtor acted as a fiduciary respecting the trust when the debt arose; and (3) in the course of performing his fiduciary duties respecting the trust, the fiduciary committed an act of fraud or defalcation. *Otto v. Niles (In re Niles)*, 106 F.3d 1456, 1461-62 (9th Cir. 1997). Plaintiff bears the burden of proving these elements at trial by a preponderance of the evidence. *In re Sato*, 512 B.R. 241, 246 (Bankr. C.D. Cal. 2014) (citing *Grogan v. Garner*, 498 U.S. 279, 291(1991)). That same burden is applicable at the summary judgment stage. *See U.S. V. Byrum*, 1987 WL 124352, *2 (E.D. Cal. 1987).

1. The Trust and Defendant as a Fiduciary of the PACA Trust

The first two elements of plaintiff's § 523(a)(4) are established.

Plaintiff's undisputed delivery of fresh produce to AGI created a statutory PACA trust that will remain in effect until plaintiff is paid in full. *GW Palmer & Co., Inc., et al. v. Dye (In re Tanimura Dist., Inc.)*, 2011 WL 3299933, *7 (9th Cir. BAP 2011) (citing *C&E Enters., Inc. v. Milton Poulos, Inc. (In re Milton Poulos, Inc.)*, 947 F.2d 1351, 1352 (9th Cir. 1991)). The PACA trust is a trust and imposes fiduciary duties within the context and scope of § 523(a)(4). *See In re Watford*, 374 B.R. 184, 190-191 (Bankr. M.D. N.C. 2007) (collecting cases). Defendant recognizes and does not dispute the existence of a PACA trust.

Based on the extent of control that the defendant exercised over AGI, as the court previously established at the claim objection stage and as defendant's deposition

[3]Absent that evidence, the court read *Ozcelik* to preclude priority status of plaintiff's PACA trust claim against the secondarily-liable defendant. *Id.* at 491-492. As *Ozcelik* explains, a priority claim in the chapter 13 case of debtor who is secondarily-liable exists only if PACA trust assets are diverted to the secondarily-liable chapter 13 debtor in his or her individual capacity. *Id.; see also In re Stewart*, 1994 WL 507016 (Bankr. N.D. Ga. 1996).

testimony and interrogatory answers confirm, defendant is a secondarily-liable trustee of the PACA trust. *See Sunkist Growers Inc., v. Fisher*, 104 F.3d 280, 282 (9th Cir. 1997). That means defendant's assets are presumptively subject to the trust. *Tom Lange Co., Inc. v. Kornblum & Co., Inc. (In re Kornblum & Co., Inc.,)* 81 F.3d 280, 286 (2d Cir. 1996); *Healthy Harvest Berries, Inc., v. Rodriguez*, 2014 WL 931829 (E.D. Cal. 2014) (agreeing with *Kornblum* regarding scope of PACA trust); *In re L & R Holdings, Inc.*, 2002 WL 31163661 (Bankr. N.D. Cal. 2001) ("The PACA trust presumptively applies to all assets used in the produce-related business."). That also means, as the party resisting plaintiff's PACA trust claim, defendant must demonstrate which assets are not subject to the PACA trust. *Produce Alliance v. Let-US Produce*, 776 F. Supp. 2d 197, 211 (E.D. Va. 2011) (citations omitted); *see also In re Bear Kodiak Produce, Inc.*, 283 B.R. 577, 583 (Bankr. D. Ariz. 2002) (citations omitted).

Defendant's challenge to the extent of the PACA trust is limited to a single asset. Defendant maintains that business rental income deposited into a Wells Fargo account was not a PACA trust asset because that rental income is not traceable to PACA proceeds. The problem with that argument is that defendant also concedes that the business rental income deposited into the Wells Fargo account was commingled with PACA proceeds that were also deposited into the same account. Ignoring for the moment that defendant does not explain how it is possible to segregate funds in a commingled account, even assuming that is possible, defendant has not submitted any evidence that business rental income and PACA proceeds in the Wells Fargo account were somehow segregated. Consequently, the entire Wells Fargo account and all funds in it were (and remain) a PACA trust asset. *General Produce Co. v. Warehouse Markets, LLC*, 2015 WL 3488250 (E.D. Cal. 2015) ("When trust assets have been commingled with funds not subject to the trust, a PACA trust is impressed upon the entire commingled fund for the benefit of the trust beneficiaries.").

2. Defendant's Defalcation in the Course of Performing Duties as Trustee of the PACA Trust

The third element of plaintiff's § 523(a)(4) claim is not established.

Plaintiff asserts that defendant breached his duties as a trustee of the PACA trust. Plaintiff maintains the breach occurred when defendant paid himself a salary with commingled funds from the Wells Fargo account and thereby diverted PACA trust assets to himself personally before he paid plaintiff for the produce plaintiff delivered to AGI. Assuming that to be the case, plaintiff has not submitted any evidence that the salary defendant paid himself with funds from the commingled Wells Fargo account was exorbitant, was paid outside the ordinary course of AGI's business, or caused plaintiff to go unpaid. In the absence of that evidence, the court is unable to conclude as a matter of law that defendant breached his duties as a secondarily-liable trustee of the PACA trust. *See e.g.*, *Bear Kodiak*, 283 B.R. at 587-588 ("[P]ayments made in the ordinary course of a produce buyer's business, including minimal salaries and expenses, do not constitute a breach of a PACA trust."); *see also William Consualo & Sons Farms, Inc. v. Drobnick Distributing, Inc.*, 2011 WL 1211911, *7-8 (D. Ariz. 2011) (following *Bear Kodiak*).

In sum, there remain unresolved material facts relevant to the third element of plaintiff's § 523(a)(4) claim that preclude summary judgment for plaintiff on the first claim for relief alleged in the complaint. Therefore, summary judgment will be denied.[4]

[4]Because judgment will not be entered for plaintiff on the first claim for relief, summary judgment for plaintiff on the second claim for relief is also denied. Should plaintiff ultimately prevail and request attorney's fees, even if attorney's fees are recoverable under PACA or some other state statute and/or by the terms of some agreement between the parties', plaintiff must still establish that attorney's fees are recoverable in this non-dischargeability action. *See Cohen v. de la Cruz*, 523 U.S. 213, 220-21 (1998); *Bos v. Board of Trustees*, 818 F.3d 486, 489-90 (9th Cir. 2016); *Cardenas v. Shannon (In re Shannon)*, 553 B.R. 580, 393-396 (9th Cir. BAP

Claim Reconsideration

Although unresolved factual issues material to a determination of defendant's defalcation as a trustee of the PACA trust preclude summary judgment on plaintiff's § 523(a)(4) claim, the additional evidence plaintiff submitted with its summary judgment motion which was not available at the claim objection stage permits the court to re-characterize plaintiff's claim in the underlying chapter 13 case.

As explained above, the court previously followed *Ozcelik* and sustained the debtors' objection to the characterization of plaintiff's claim as a secured/priority PACA trust claim. It did so because although at the claims objection stage there was evidence that defendant diverted PACA trust assets to himself there was no evidence of the capacity in which defendant held the diverted PACA trust assets. That evidentiary gap caused the court to relegate plaintiff's PACA trust claim to a general unsecured claim consistent with its reading of *Ozcelik*.

Plaintiff has now produced evidence in the form of defendant's deposition testimony and interrogatory answers which confirm that defendant diverted PACA trust assets, *i.e.*, funds from the commingled Wells Fargo account, to himself and that defendant acquired and held those PACA trust assets in a personal rather than representative capacity, *i.e.*, as a personal salary. Based on that evidence, and consistent with *Ozcelik*, the court will re-characterize plaintiff's claim asserted in its proof of claim as a secured priority PACA trust claim.

Conclusion

For all the foregoing reasons, it is ordered that plaintiff's motion for summary judgment is denied.

It is further ordered that plaintiff's motion for reconsideration of its claim is granted and plaintiff's claim in the underlying chapter 13 case is re-characterized as a priority secured PACA trust claim.

The court will enter an appropriate minute order.

2016); *Redwood Theaters, Inc. v. Davison (In re Davison)*, 289 B.R. 716, 722 (9th Cir. BAP 2003).

30.	16-26585-B-13 BMV-2	CATHERINE CRUZ AND JACK LAM Bert M. Vega	MOTION TO CONFIRM PLAN 12-19-16 [43]

CONTINUED TO 2/21/2017 AT 1:00 P.M. TO SEE IF CAPITAL ONE BANK USA, N.A., COAST TO COAST FINANCIAL, AND SEARS/CBNA FILE PROOFS OF CLAIM AND TO ALLOW FOR THE NON-GOVERNMENTAL DEADLINE TO FILE CLAIMS TO PASS.

Final Ruling: No appearance at the February 7, 2017, hearing is required. The court will enter an appropriate minute order.

31. 16-25086-B-13 FLOYDETTE JAMES — MOTION TO CONFIRM PLAN
PLG-2 Steven A. Alpert — 12-21-16 [30]

DEBTOR DISMISSED: 12/28/2016

Final Ruling: No appearance at the February 7, 2017, hearing is required. The case having been dismissed on December 28, 2016, the motion is dismissed as moot.

The court will enter an appropriate minute order.

32. 14-23487-B-13 ROBERT COVERT MOTION TO MODIFY PLAN
DJC-2 Diana J. Cavanaugh 12-23-16 [49]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court'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 23, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

33. 16-27089-B-13 LEONARDO MERCURIO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Pro Se — 12-30-16 [28]

Final Ruling: No appearance at the February 7, 2017, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption 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)(ii) 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.

First, the Debtor has claimed his interest in real and/or personal property as exempt under both California Code of Civil Procedure § 703 and § 704. Pursuant to California Code of Civil Procedure §§ 703.140(a)(1) and (a)(3), a debtor may claim certain property as exempt under either § 703 ro § 704 but not a combination of both.

Second, the Debtor has claimed his real property, Charles Schwab account, and bank accounts as exempt for "100% of fair market value, up to any applicable statutory limit." California law permits a finite exemption. It does not permit an exemption of whatever the property happens to be worth. The claim of exemption is improper and the Debtor must claim a specific amount of equity as exempt up to the relevant statutory maximum.

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

The court will enter an appropriate minute order.

34. 16-26999-B-13 ANGELINA KUBRAKOV
JPJ-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-30-16 [58]

DEBTOR DISMISSED: 01/08/2017

Final Ruling: No appearance at the February 7, 2017, hearing is required. The case having been dismissed on January 8, 2017, the objection is overruled as moot.

The court will enter an appropriate minute order.