UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY
DATE: February 11, 2020
CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 11, 2020 at 1:00 p.m.

1.	19-26402-B-13 DPC-1	JORGE VASQUEZ Thomas A. Moore	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 11-25-19 [15]

CONTINUED TO 3/10/2020 TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 3/05/2020.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

2.	18-24606-B-13 CAS-1	ARNOLD POSADAS AND NILA CARDENAS Mohammad M. Mokarram	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-7-20 [30]

CAPITAL ONE AUTO FINANCE VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Nissan Sentra SL Sedan 4D (the "Vehicle"). The moving party has provided the Declaration of Amanda Schneeberger to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schneeberger Declaration states that there are 0 pre-petition payments in default and 3.565 post-petition payments in default totaling $994.20.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $12,305.98, as stated in the Schneeberger Declaration, while the value of the Vehicle is determined to be $6,512.00 the Schneeberger Declaration.

The Vehicle is not provided for anywhere in Debtors' petition or plan.

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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors 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 creditor, 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. 19-27910-B-13 JOHN HATZIS MOTION TO IMPOSE AUTOMATIC STAY
ADR-1 Justin K. Kuney 1-24-20 [19]

Tentative Ruling

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on February 25, 2019, due to delinquency in plan payments (case no. 18-20243, dkts. 75, 77). The Debtor's second bankruptcy case was dismissed on September 27, 2019, due to delinquency in plan payments(case no. 19-22226, dkts. 25, 27).

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The first case of the Debtor was dismissed due to a misunderstanding between the Debtor, the Court, the Trustee and the Debtor's Attorney. A substantial extra payment was paid into the plan from the settlement of a pre-petition claim. The debtor was under the impression that the extra payment was sufficient to pay all claims and the Debtor was not required to continue his monthly plan payments. When the Trustee moved for dismissal the Debtor could not amass the funds needed to cure the delinquency.

The second case of the Debtor was filed around the time an LLC, wholly controlled and owned by the Debtor, opened a new restaurant (hereafter 'the restaurant'). The opening was delayed, opening expenses were underestimated, revenue growth was slower than expected, and its chef stole money and inventory valued at $75,000.00 from the restaurant. During this time the Debtor fell behind on plan payments resulting in eventual dismissal of the second case.

Since filing the second case, the debtor's restaurant increased sales and profitability. However, the Debtor notes that shortly after this case was filed, a small fire burned a portion of the building in which the restaurant operated. The building is going to take several months to repair but the Debtor's wholly controlled and owned limited liability company, Toms All American, LLC ("LLC") had an insurance policy that covers loss of business income. The Debtor is receiving this income through the LLC and it will supplement the lost wages and income from the restaurant. Debtor contends that even under the changed circumstances caused by the fire the Debtor

can make his plan payments.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

4.	19-27111-B-13 RK-2 **See also #32-33**	MICHAEL/SHANON BENNETT Richard Kwun	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), NA 1-15-20 [23]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). However, it appears that Capital One Bank (USA), NA was not served. The only parties served were Chapter 13 Trustee David Cusick and United States Trustee Jason Blumberg. Due to insufficient service of process, the court's decision is to deny the motion without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5. 19-24313-B-13 ANN CONRAD
Travis E. Stroud

AMENDED MOTION TO VACATE DISMISSAL OF CASE
1-3-20 [65]

DEBTOR DISMISSED: 12/19/2019

Final Ruling

The court has before it a Notice of Motion and Motion to Reinstate Debtor's Chapter 13 Bankruptcy Case, dkt. 63, and an Amended Notice of Motion and Motion to Reinstate Debtor's Chapter 13 Bankruptcy Case, Dkt. 65, filed by Debtor Ann Conrad ("Debtor"). The amended motion supercedes the motion and controls.

The court has reviewed the amended motion. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. The court has determined that oral argument will not assist in the decision-making process or resolution of the amended motion. *See* Local Bankr. R. 9014-1(h); *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues these findings of fact and conclusions as a Final Ruling. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

For the reasons explained below, the amended motion will be denied without prejudice to the refiling of another Chapter 13 case.

Background

This Chapter 13 case was filed on July 9, 2019. Dkt. 1. On the basis that the Debtor failed to prosecute her case after confirmation of an amended plan was denied on October 8, 2019, the Chapter 13 Trustee ("Trustee") filed and served a motion to dismiss on November 22, 2019. Dkts. 53-56. The Trustee's motion to dismiss was heard and granted at 1:13 p.m. on December 17, 2019.[1] Dkts. 58-59. An order dismissing this case was subsequently entered on December 20, 2019. Dkt. 60.

The Debtor moved to vacate the dismissal order and reinstate her Chapter 13 case on December 31, 2019. Dkt. 63. The amended motion was filed three days later, on January 3, 2020. Dkt. 65.

The amended motion states that relief is sought under Federal Rules of Civil Procedure ("Civil Rule") 59 and 60 (applicable by Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 9023 and 9024, respectively). Dkt. 65 at 2:15-16. The amended motion, however, provides no analysis or grounds for relief under either rule. It does, however, state that relief is sought on the basis that Debtor's attorney relocated his office and "[he] believed that [his] new address was updated in the electronic filing system, however, it was not, and therefore, [his] office received no notice that a motion to dismiss had been filed or granted." Dkt. 65 at 2:8-10.

Discussion

The amended motion suffers from significant procedural defects, the least of which are that the amended motion and the corresponding notice of hearing are not filed as separate documents and there is no certificate of service. *See* Local Bankr. R. 9004-2(c)(1); 9014-1(e)(1); 9014-1(d)(4); 9014-1(e)(1); 9014-1(e)(3). At a minimum, the court is unable to discern who, if anyone, was served with the motion.

The amended motion is also substantively defective. Filed within 14 days of the entry of the dismissal order, the amended motion relates back to the initial motion and is governed by Civil Rule 59(e). *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2

[1] Approximately two and one-half hours later on the same date, at 3:48 p.m., the Debtor filed another amended plan and motion to confirm it. Dkt. 57. The motion to confirm and confirmation of the amended plan were denied as moot on January 21, 2020. Dkts. 67-68.

(Bankr. E.D. Cal. 2012). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The amended motion addresses none of the Rule 59(e) factors. It identifies no manifest error of law or fact, presents no newly discovered or previously unavailable evidence, and identifies no intervening change in controlling law. At best, construed liberally and in the Debtor's favor, it touches upon manifest injustice. But even that is doubtful and it is not at all credible.

No one disputes that the Debtor was served with the Trustee's motion to dismiss by U.S. mail. *See* Dkt. 56. And the court is hard-pressed to believe that a change in the physical location of the Debtor's attorney's office effectuated a change in his electronic or e-mail address on file with the court. In fact, the assertion by the Debtor's attorney that he did not receive notice of the Trustee's motion to dismiss appears to be outright misrepresentation.

A copy of the court's electronic PACER record associated with the Trustee's motion to dismiss, of which the court takes judicial notice, is reproduced below:

Subject Line: *Ann Conrad, 2019-24313 Motion/Application to Dismiss Case*

Body: ****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.*

U.S. Bankruptcy Court

Eastern District of California

Notice of Electronic Filing

The following transaction was filed by Kristen Arah Koo on 11/22/2019 at 9:25 AM and docketed by the court on 11/22/2019 at 1:29 PM.

Case Name: Ann Conrad,
Case Number: 2019-24313
Document Number: 53
Document Type: motion
Document SubType: mdsmcs

Docket Text: Motion/Application to Dismiss Case [DPC-1] Filed by Trustee David Cusick (vcaf)

The following document(s) are associated with this transaction:

Document Description: Main Document
Original filename: 2019-24313-OID-DPC-1.pdf
Electronic document Stamp: 4efbe731-ce3f-4742-b757-3a122697f4c3

2019-24313 Notice will be electronically mailed to:

Travis E. Stroud on behalf of Debtor Ann Conrad
teskdd@yahoo.com; ***travisstroudlaw@yahoo.com***

David Cusick
legalmail@cusick13.com

Office of the U.S. Trustee
ustpregion17.sc.ecf@usdoj.gov

Jennifer H. Wang on behalf of Creditor Santander Consumer USA Inc.
jwang@cookseylaw.com; jwang@ecf.courtdrive.com

Kristen Arah Koo
kkoo@cusick13.com; legalmail@cusick13.com

2019-24313 Notice will not be electronically mailed to:

Synchrony Bank
c/o PRA Receivables Management, LLC
Norfolk, VA 23541

(Emphasis added).

The foregoing filing receipt reflects that the Trustee's motion to dismiss was sent to the Debtor's attorney at travisstroudlaw@yahoo.com. That e-mail address is the e-mail address that the Debtor's attorney included as his official e-mail address of record on the Debtor's petition in this case. *See* Dkt. 1 at p.7.

The court takes judicial notice of the docket in *In re Alexander Clifford Bordeau IV*, case no. 20-20226, which Debtor's attorney filed on January 15, 2020, and which is pending before Department B. According to the petition in the *Bordeau* case, Debtor's attorney continues to use the travisstroudlaw@yahoo.com e-mail address as his official e-mail address of record. *See* case no. 20-20226, dkt. 1 at p.7.

Given that the Debtor's attorney used travisstroudlaw@yahoo.com as his official e-mail address at the inception of this case on July 9, 2019, and given that he also used that same e-mail address as his official e-mail address of record in a case filed on January 15, 2020, and thus in a case filed well after this case, the court does not believe that the Debtor's attorney did not receive notice of the Trustee's motion to dismiss when it was filed on November 22, 2019. And having received notice of the motion, the consequences of doing nothing in response to it are not manifestly unjust. *See Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 673 (D.C. Cir. 2004)(noting that manifest injustice does not exist where a party could have easily avoided the outcome). Relief under Civil Rule 59(e) will therefore be denied.

To the extent applicable, relief under Civil Rule 60(b) will also be denied. Construed liberally and in the Debtor's favor, it is possible to read the amended motion to include a request for relief on the basis of excusable neglect under Civil Rule 60(b)(1). Nevertheless, the motion fails on that basis as well.

Relief for excusable neglect under Civil Rule 60(b)(1) is governed by the *Pioneer-Briones* factors which are: (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). Debtor addresses only the third factor. The court will address all.

The first factor weighs against granting relief. When this case was dismissed the automatic stay terminated for all purposes as to all creditors. Once terminated the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming that vacating the dismissal order could revive the automatic stay, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so would result in confusion and undue prejudice to creditors who may not necessarily comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay.

The second factor weighs against granting relief. Debtor filed the initial motion eleven days, and the amended motion fourteen days, after the dismissal order was entered. However, if this case was reinstated, given the time required to serve and notice a plan and motion to confirm it, this case would effectively be pending for nearly nine months without a confirmed plan.

The third and fourth factors weigh against granting relief. As noted above, the reason for the dismissal was well within the control of the Debtor and her attorney in that both received notice of the Trustee's motion to dismiss and did nothing in response to it. And as also noted above, the reason given for doing nothing, *i.e.*, the assertion that Debtor's attorney did not receive notice of the motion, is not at all credible. And for that reason, it is also an assertion made in bad faith.

On balance, to the extent applicable, the *Pioneer-Briones* factors weigh against granting relief from the dismissal order for excusable neglect. Relief under Civil Rule 60(b)(1) will therefore be denied and the order dismissing this Chapter 13 case will not be vacated on that basis.

Finally, to the extent applicable, relief under Civil Rule 60(b)(6) is also not warranted and is denied to the extent requested. Civil Rule 60(b)(6) permits the court to grant relief for "any other reason that justifies relief." *See* Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. Relief under Rule 60(b)(6) is limited to errors or actions beyond the party's control. *Latshaw v. Trainor Worthman & Co. Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006). For the reason explained above, this standard is not met here.

Conclusion

For all the foregoing reasons, the Debtor's amended motion to vacate the dismissal order and reinstate her Chapter 13 case is denied without prejudice to the refiling of another Chapter 13 case. The motion is denied as superceded and therefore moot.

The amended motion, dkt. 65, is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The motion, dkt. 63, is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. 19-27617-B-13 DPC-1 — MINH TRAN AND THUY LAI — Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 1-23-20 [20]

Tentative Ruling

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

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

First, the Debtors have not established that they have regular income and would not be eligible for Chapter 13 relief pursuant to 11 U.S.C. § 109(e). Debtors show no income in the last two years or year-to-date on their Statement of Financial Affairs, nor any income in the last six months on the Means Test. While the Debtors state that they receive $3,000.00 per month from a daughter, no declaration from the daughter has been filed with the court.

Second, the plan does not complete within the stated 36 months due to Claim No. 3 filed by the Internal Revenue Service that lists priority and secured claims higher than that estimated in the plan. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, the Debtors may not have filed all applicable tax returns as required pursuant to 11 U.S.C. §§ 1325(a)(9), 1308. Claim No. 3 filed by the Internal Revenue Service shows that tax liability is estimated for 2016, 2017 and 2018 because no return has been filed.

Fourth, the Debtors have not provided sufficient disclosure regarding their former businesses, their daughter's financial contribution, and their income for tax years 2016, 2017 and 2018. Without further information, it cannot be determined whether Debtors' plan pays unsecured claims at least what they would receive in a Chapter 7 pursuant to 11 U.S.C. § 1325(a)(4).

The plan filed December 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. 19-27826-B-13 LATANYA GREY
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-29-20 [13]

Tentative Ruling

The objection 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 sustain the objection and deny confirmation of the plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $850.00, which represents approximately 1 plan payment. 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, feasibility depends on the granting of a motion to value collateral of Aaron's Sales & Lease Ownership. No motion to value has been filed to date.

Third, it cannot be determined whether Debtors' plan pays unsecured claims at least what they would receive in a Chapter 7 pursuant to 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee requested copies of statements for the "medical/retirement" account where funds from Debtor's worker's compensation settlement were deposited and requested a copy of wrongful termination settlement. To date, the information has not been provided to the Trustee.

The plan filed December 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. 19-27829-B-13 SVETLANA VONDRA
DPC-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-29-20 [15]

Tentative Ruling

The objection 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 sustain the objection and deny confirmation of the plan.

First, the plan may not be in the Debtor's best efforts under 11 U.S.C. § 1325(b). The Debtor is below the median income but may have additional disposable income to pay toward the plan. Specifically, Debtor's 2018 federal and state income tax returns show that Debtor received a combined refund of $7,471.00. The Debtor's plan calls for $505.00 in monthly plan payments for 60 months with a 6.73% dividend to unsecured creditors.

Second, Debtor may not be able to make plan payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Debtor's two bank account balances on the date of the petition were less than $1.00 and do not support the ability to make monthly plan payments.

The plan filed December 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9.	19-27735-B-13 DPC-1	AMY MCCLELLAN John G. Downing	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-22-20 [18]

CONTINUED TO 3/03/2020 TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 2/27/2020.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

10. 19-24540-B-13 SHEILA BROWN
PSB-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
1-8-20 [32]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Capital One Auto Finance, a Division of Capital One, N.A. at $6,500.00.

Debtor's motion to value the secured claim of Capital One Auto Finance, a Division of Capital One, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Nissan Versa ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,500.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *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. 2 filed by Capital One Auto Finance, a Division of Capital One, N.A. 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 on November 3, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,331.13. 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 $6,500.00 *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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11.	19-27653-B-13 DPC-1	JUAN ZARAGOZA AND MARIA GARCIA Harry D. Roth	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 1-21-20 [16]

CONTINUED TO 3/03/2020 TO BE HEARD IN CONJUNCTION WITH TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTION.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

12. 19-26955-B-13 WARREN CARLSON
BB-1 Bonnie Baker
Thru #13

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK
1-8-20 [34]

Tentative Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Debtor's motion to value the secured claim of Wells Fargo Bank ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 26026 State Highway 44, Shingletown, California ("Property"). Debtor seeks to value the Property at a fair market value of $227,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *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 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.

A response of non-opposition was filed by the Chapter 13 Trustee.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Wells Fargo Bank, N.A. the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $252,862.00. Creditor's second deed of trust secures a claim with a balance of approximately

$91,903.30 based on Claim No. 5-1. 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. 19-26955-B-13 DPC-1 — WARREN CARLSON, Bonnie Baker — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 12-17-19 [30]

Tentative Ruling

The objection 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). 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.

Feasibility depends on the granting of a motion to value collateral of Wells Fargo Bank. That motion was granted at Item #12, DCN BB-1.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 17, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

14. 19-27256-B-13 MILTON CHEEK
AP-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-20 [25]

SELECT PORTFOLIO SERVICING INC. VS.

No Ruling

15. 19-26161-B-13 APN-1 **Thru #18**
CIRILO/RIZEL LARON
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-14-19 [19]

Tentative Ruling

This matter was continued from December 10, 2017, and again from January 7, 2020, due to the disputed value of collateral held by Wells Fargo Bank, N.A.

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

Feasibility depends on the granting of motions to value collateral of Nissan Motor Acceptance Corporation and Wells Fargo Bank N.A. The motion to value collateral of Nissan Motor Acceptance is granted, and the parties to the motion to value collateral of Wells Fargo Bank, N.A. have reached a stipulation.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 11, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

16. 19-26161-B-13 DPC-1
CIRILO/RIZEL LARON
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-15-19 [25]

Tentative Ruling

This matter was continued from December 10, 2017, and again from January 7, 2020, due to the disputed value of collateral held by Wells Fargo Bank, N.A.

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

Feasibility depends on the granting of motions to value collateral of Nissan Motor Acceptance Corporation and Wells Fargo Bank N.A. The motion to value collateral of Nissan Motor Acceptance is granted, and the parties to the motion to value collateral of Wells Fargo Bank, N.A. have reached a stipulation.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 11, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

17. 19-26161-B-13 CIRILO/RIZEL LARON — CONTINUED MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION
PGM-1 Peter G. Macaluso — 11-20-19 [29]

Tentative Ruling

This matter was continued from December 10, 2017, and again from January 7, 2020, due to a separate motion to value collateral of Wells Fargo Bank, N.A.

The court's decision is to value the secured claim of Nissan Motor Credit Acceptance at $9,251.00.

Debtors' motion to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of 2016 Nissan Altima ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $9,251.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Chapter 13 Trustee filed a response noting that Creditor filed a proof of claim. The Trustee does not oppose Debtors' motion.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Nissan Motor Acceptance 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 on February 15, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,129.15. 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 $9,251.00. *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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. 19-26161-B-13 CIRILO/RIZEL LARON — CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
PGM-2 Peter G. Macaluso — 11-20-19 [34]

Tentative Ruling

This matter was continued from December 10, 2017, and again from January 7, 2020, due to the disputed value of collateral held by Wells Fargo Bank, N.A.

The court's decision is to deny the motion as moot since the Debtors and Wells Fargo Bank, N.A. have reached a stipulation as to value of the 2016 Nissan Altima. The denial is conditional on the filing of the stipulation with the court.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19.	19-27562-B-13 DPC-1	KENNETH SMITHOUR Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-22-20 [13]

CONTINUED TO 2/18/2020 TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 2/13/2020.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

20. 20-20064-B-13 SONYA PINA
SMR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-20 [11]

MARINA KHASLAVSKY VS.

DEBTOR DISMISSED: 1/27/2020

Final Ruling

The case having been dismissed on January 27, 2020, the motion is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

21. 19-27665-B-13 ANTOINETTE EDWARDS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Peter G. Macaluso — 1-22-20 [41]
Thru #22

CONTINUED TO 3/03/2020 TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

22. 19-27665-B-13 ANTOINETTE EDWARDS — OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT LLC
MRG-1 Peter G. Macaluso — 1-22-20 [38]

CONTINUED TO 3/03/2020 TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

23.	19-26466-B-13 MJD-2	JOANNE BRONSON Matthew J. DeCaminada	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 4 12-27-19 [30]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Joanne Bronson ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of $1,199.70. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about April 14, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 17, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24. 19-27370-B-13 MARIA WILLIAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1 Eric W. Vandermey — 1-10-20 [17]

WELLS FARGO BANK, N.A. VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of all parties in interest who did not respond to the motion are entered.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1756 Dover Circle, Suisun City, California (the "Property"). Movant has provided the Declaration of Rodney O'Neil to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The O'Neil Declaration states that loan for which the Property is collateral is in default $60,662.69 in pre- and post-petition debt. The loan has been in default for over two years.

Furthermore, the Property has been the subject of five bankruptcies: three filed by Ozeniesha Clara Williams and two filed by the Debtor. *See* case nos. 14-22283 Marie F. Williams aka Maria F. Williams (filed 3/06/14; dismissed 8/06/14); 16-23168 Ozniesha Clara Williams (filed 5/16/16; dismissed 3/08/17); 17-23276 Ozniesha Clara Williams (filed 5/14/17; dismissed 9/29/17); and 18-20914 Ozniesha Clara Williams (filed 2/19/18; dismissed 9/27/19). Trustee's sales were postponed on 5/18/16, 5/17/17, 2/21/18, 11/27/19. Also Debtor Maria Williams ("Debtor") was deeded the Property via a deed dated 10/21/2019 and filed bankruptcy on 11/26/2019, one day before Movant's trustee's sale. Movant seeks relief pursuant to 11 U.S.C. §§ 362(d)(1) and (4).

A response (but not an opposition) was filed by the Chapter 13 Trustee stating that the Debtor is delinquent two plan payments and that the plan provides for the Movant's claim but did not provide for the full amount of arrears.

Discussion

The court may terminate the automatic stay for, among other reasons, cause. *See* 11 U.S.C. § 362(d)(1); *In Re Victory Const. Co., Inc.*, 9 B.R. 549, 560 (Bankr. C.D. Cal. 1981) (cause under § 362(d)(1) has been defined as "any reason cognizable to the equity power and conscience of the court as constituting an abuse of the bankruptcy process."). The court may also grant a creditor whose claim is secured by an interest in real property in rem relief "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or . . . (B) multiple bankruptcy filings affecting such real property." 11 U.S.C § 362(d)(4). Movant has demonstrated that relief under both sections is appropriate in this case.

Debtor is not the original borrower. As noted above, the Property was deeded to the Debtor on 10/21/19. There is no evidence that Movant authorized the transfer.

The pattern of transfers and bankruptcy filings immediately prior to a foreclosure sale is indicative of bad faith and filing bankruptcy cases for an improper purpose. Case no. 16-23168 was filed on 5/16/16 before a 5/18/16 foreclosure sale. Case no. 17-23276 was filed on 5/14/17 before a 5/17/17 foreclosure sale. Case no. 18-20914 was filed on 2/19/18 before a 2/21/19 foreclosure sale. In addition to preventing Movant from proceeding with a properly scheduled foreclosure sale, the referenced cases were not

properly prosecuted. Case no. 16-23618 was dismissed for failure to make plan payments. Case no. 17-23276 was dismissed for failure to make plan payments. Case no. 18-20914 was dismissed for failure to make plan payments.

The Debtor filed this case on 11/26/19, shortly after she was deeded the Property and immediately before an impending 11/27/19 foreclosure sale. Not surprisingly, the Debtor is not making plan payments. The Debtor is delinquent at least two plan payments.

Based on the evidence submitted, and for the reasons stated, the court is persuaded that the unauthorized transfer of the Property and the filing of multiple non-productive bankruptcy cases affecting the Property are acts of bad faith. They are also part of a larger and well-planned scheme to hinder, delay or defraud Movant by preventing Movant from exercising its lawful rights and remedies under applicable non-bankruptcy law on a loan in default for two years. The motion - and the relief from the automatic stay requested in it - are therefore granted under §§ 362(d)(1) and (d)(4). *See Duvar Apt., Inc. v. FDIC (In re Duvar Apt., Inc.)*, 205 B.R. 196, 200-01 (9th Cir. BAP 1996); *In re Yukon Enterprises, Inc.*, 39 B.R. 919, 921-22 (Bankr. C.D. Cal. 1984).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

COUNSEL FOR MOVANT SHALL LODGE AN APPROPRIATE ORDER WITH THE COURT.

25. 19-27574-B-13 RYAN SAHADEO
DPC-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-29-20 [26]

Tentative Ruling

The objection 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 sustain the objection and deny confirmation of the plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $87,436.00. An additional payment of $1,400.00 will be due by February 25, 2020. 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 Debtor cannot make plan payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). The plan calls for a first payment of $87,436.00 followed by 59 payments of $1,400.00 per month. According to the Trustee's calculations, the plan payment starting in month two is insufficient to fund the plan and the plan will exceed the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Third, the Debtor has not provided the Trustee with a copy of a requested "Note Receivable" in the amount of $100,000.00 related to his investment in his father and brother's business.

Fourth, the Debtor has not provided the Trustee with requested copies of certain items in connection with real estate business including, but not limited to, income tax returns for the 2-year period prior to the filing of the petition, 6-month period of profit and loss statements, and proof of all required insurance or permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

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

Sixth, the Debtor's petition and schedules are inaccurate. Specifically, the petition does not include Debtor's middle name, Schedule H does not list that Debtor resides in a community property state, Schedule I does not include Debtor's employer's address, Schedule I does not reflect Debtor's gross monthly income, monthly expenses, and net monthly income related to his work in real estate, and the Statement of Financial Affairs does not identify any gross income for tax years 2017 through 2018.

The plan filed December 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26.	19-27482-B-13 MET-1	TONIA BEAIRD Mary Ellen Terranella	CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO AUTO FINANCE 12-21-19 [13]

No Ruling

27. 19-27689-B-13 KEITH JOHNSON
DPC-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
1-23-20 [26]

Tentative Ruling

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

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

First, the Debtor has not provided the Trustee with requested copies of certain items in connection with her business including, but not limited to, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, and proof of all required insurance or permits. It cannot be determined whether the business is solvent and necessary

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

Third, the plan cannot be assessed for feasibility pursuant to 11 U.S.C. § 1325(a)(6) because the Debtor has failed to disclose information related to her non-filing spouse's business on Schedules I, the Statement of Financial Affairs, and has not provided a balance sheet for this business. The plan may not be in the Debtor's best effort pursuant to 11 U.S.C. § 1325(b).

The plan filed December 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

28.	19-27597-B-13 DPC-2	PAVEL LISETSKY Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 1-29-20 [22]

CONTINUED TO 4/07/2020 TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 4/02/2020.

Final Ruling

No appearance at the February 11, 2020, hearing is required. The court will enter a minute order.

29. 19-27699-B-13 MIGUEL/TERESITA LUNA
DPC-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
1-23-20 [14]

Tentative Ruling

The objection 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). 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.

Debtors may not be able to make plan payments proposed pursuant to 11 U.S.C. § 1325(a)(6). Debtors in this case are the business tenants and daughter and son-in law of the debtors, Jose Santana and Alicia Santana (collectively, "the Santanas"), in another case (no. 19-27811).

Debtor's Business Income and Expense attached to Schedule I fails to disclose an expense for rent and there is no business rental lease agreement to determine the content of the lease.

Moreover, the Santanas' case states that they receive $1,460.00 per month in rent from a business lease. That case also states that the Santanas receive $1,400.00 in "support from daughter."

In this case, Debtors' Schedule J shows $1,400.00 in monthly expenses for "support to elderly parents." However, the Debtors have not filed a declaration in case no. 19-27811 establishing these support payments are being made.

The plan filed December 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

30. 19-27775-B-13 RANKIN LYMAN
DPC-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK O.S.T. 1-30-20 [17]

Tentative Ruling

The objection 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 sustain the objection and deny confirmation of the plan.

First, the plan cannot be assessed for feasibility because Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to net income from his self-employment as a roofer and Lyft driver.

Second, the Debtor has not provided the Trustee with requested copies of certain items in connection with his business, including 6-months profit and loss statements, proof of all required insurance or permits, or a written statement that no such documentation exists. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed December 17, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

31. 19-27574-B-13 RYAN SAHADEO
AP-1 W. Steven Shumway
See also #25

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB
1-30-20 [35]

Tentative Ruling

The objection to confirmation by Wilmington Savings Fund Society, FSB was not set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). The objection is therefore overruled.

Nonetheless, the plan is not confirmable for reasons stated at Item #25, DPC-1. The plan filed December 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

32. 19-27111-B-13 MICHAEL/SHANON BENNETT
DPC-1 Richard Kwun
Thru #33
See Also #4

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
1-15-20 [28]

Tentative Ruling

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

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

First, feasibility depends on the granting of a motion to value the lien of Capital One Bank (USA), NA. That motion was heard at Item #4, DPC RK-1, and denied without prejudice.

Second, the petition fails to include Joint Debtor's middle name. The Debtors Class 1 checklist provided to the Trustee showed the middle name.

Third, the Debtors' street address is inconsistent as it appears as "Main" street on the court docket but "Maine" street on Schedule A/B.

The plan filed December 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

33. 19-27111-B-13 MICHAEL/SHANON BENNETT
Richard Kwun

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY EQUITY TRUST COMPANY
1-16-20 [32]

Tentative Ruling

The objection 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). 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. However, the plan is not confirmed for reasons stated at Item #32, DCN DPC-1.

Equity Trust Company filed an objection to confirmation asserting that it holds a senior position not secured by a deed of trust against Debtors' residence located at 234 Maine Street, Gridley, California, and that Debtors' plan fails to properly provide for its claim in Class 2 and with interest. The creditor has not filed a proof of claim and 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 objection is overruled.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the

minutes.

The court will enter a minute order.