

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: February 12, 2019

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 12, 2019 at 1:00 p.m.

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1. [18-27600](#)-B-13 TAISIYA NAFTALYEVA MOTION FOR RELIEF FROM
[EAT](#)-1 Mark Shmorgon AUTOMATIC STAY
1-14-19 [[16](#)]
CITIBANK, N.A. VS.

Tentative Ruling

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

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

Citibank, N.A. as trustee for New Residential Mortgage Loan Trust 2017-RPL1 ("Movant") seeks to annul the automatic stay retroactively as of the date of the bankruptcy petition filing so that the bankruptcy does not affect the December 7, 2018, trustee's sale with respect to real property commonly known as 437 Parkwood Drive, Manteca, California (the "Property"). Movant has provided the declarations of James M. Stefani and Flora Ly to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Stefani and Ly declarations state that Movant was not aware of the Debtor's bankruptcy filing or Debtor's alleged interest in the Property until after the trustee's sale on December 17, 2018. According to the Movant, Debtor's alleged interest in the Property stems from an unrecorded grant deed executed by the borrowers Sanjiv Reuben and Pulei M. Reuben on December 5, 2018. The Debtor did not list the Property in her schedules filed in this case.

A response has been filed by the Debtor stating that she has never owned the Property, has no connection to borrowers Sanjiv Reuben and Pulei M. Reuben, has no idea that she is in any way connected to bankruptcy case number 18-26969, and has never seen or held the grant deed prior to the filing of Movant's motion for relief. The Debtor agrees with the Movant that her name has been fraudulently used and denies being involved in any way with Sanjiv Reuben and Pulei M. Reuben. The Debtor agrees that the motion for relief should be granted.

Discussion

The Debtor having filed her response of non-opposition to the motion for relief from automatic stay, the court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The stay is retroactive to the Debtor's bankruptcy petition date.

February 12, 2019 at 1:00 p.m.

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

No other or additional relief is granted by the court.

**COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE
MOTION WITHIN SEVEN (7) DAYS.**

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 extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 14, 2018, due to failure to timely file documents (case no. 18-27368, dkt. 12). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 assert that the previous plan was filed to stop the imminent foreclosure sale on her primary residence and in hopes to confirm a plan to cure mortgage arrears. Debtor's circumstances have changed since the Debtor's former case was filed pro se and whereas in this case the Debtor is represented by counsel. Additionally, the Debtor has adjusted her withholdings and pay schedule and will be able to make plan payments moving forward.

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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

3. [16-20707](#)-B-13 EDWIN GATO
[PSB](#)-1 Pauldeep Bains

MOTION TO SELL
1-15-19 [[68](#)]

Tentative Ruling

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

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 235 Seabury Street, Suisun City, California ("Property").

Proposed purchaser Judy Sangmaster has agreed to purchase the Property for \$410,000.00. Creditor JPMorgan Chase Bank, National Association has filed a response of non-opposition to the motion to sell since the proposed sale seeks to pay Creditor in full.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

4. [18-26908](#)-B-13 KEVIN BRAKENBURY
[SDH](#)-1 Scott D. Hughes

MOTION TO CONFIRM PLAN
1-4-19 [[16](#)]

No Ruling

5. [18-23710](#)-B-13 DAVID/EMILINDA VERA MOTION TO CONFIRM PLAN
 [JJJ](#)-3 Julius J. Cherry 12-17-18 [[72](#)]

No Ruling

6. [18-25410](#)-B-13 NEAL/LOURDES BASSETT CONTINUED MOTION TO VALUE
FF-1 Gary Ray Fraley COLLATERAL OF SANTANDER
Thru #7 CONSUMER USA
12-18-18 [[38](#)]

Final Ruling

The Debtors having withdrawn the motion to value collateral of Santander Consumer USA, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DISMISSING THE MOTION WITHOUT PREJUDICE WITHIN SEVEN (7) DAYS.

7. [18-25410](#)-B-13 NEAL/LOURDES BASSETT CONTINUED MOTION TO CONFIRM
FF-2 Gary Ray Fraley PLAN
12-18-18 [[33](#)]

No Ruling

8. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON MOTION TO APPROVE LOAN
[MET](#)-4 Mary Ellen Terranella MODIFICATION
1-12-19 [[77](#)]

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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. This is a permanent loan modification following the trial period modification that the court had approved on November 6, 2018. Ocwen Loan Servicing, LLC ("Creditor") has agreed to a loan modification that will reduce Debtors' mortgage payment by approximately \$373.00 per month. The final terms of the loan agreement are almost identical to those of the trial period modification.

The motion is supported by the Declaration of James H. Johnson and Lillie M. Johnson. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

9. [17-24512](#)-B-13 LINDA CONKLING
[EWG](#)-1 Elliot Gale

MOTION TO MODIFY PLAN
12-14-18 [[61](#)]

No Ruling

10. [18-27712](#)-B-13 TOMMY/ALICE TAPLEY
[CCR](#)-1 Peter G. Macaluso
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY FORTY-NINE LIMITED
PARTNERSHIP, ELISABETH J. M.
WEILAND, E PARTNERS, L.P., IRA
SERVICES, KIMBERLY J. MAEDA,
DAVID KERCHMAN, JANICE FELDMAN,
ROBERT WALLACE, JAMIE WALLACE,
POLYCOMP TRUST COMPANY
1-24-19 [[17](#)]

Final Ruling

CONTINUED TO 3/05/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO
VALUE COLLATERAL OF ALLIANCE ACCEPTANCE CORPORATION.

THE COURT WILL PREPARE A MINUTE ORDER.

11. [18-27712](#)-B-13 TOMMY/ALICE TAPLEY
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[14](#)]

Final Ruling

CONTINUED TO 3/05/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO
VALUE COLLATERAL OF ALLIANCE ACCEPTANCE CORPORATION.

THE COURT WILL PREPARE A MINUTE ORDER.

12. [17-20513](#)-B-13 BEVERLY HUNTER
Dale A. Orthner

ORDER TO SHOW CAUSE
1-22-19 [[42](#)]

No Ruling

13. [18-26713](#)-B-13 MATEO/EVA GALVAN
[HDR](#)-1 Harry D. Roth

MOTION TO VALUE COLLATERAL OF
ENGs COMMERCIAL FINANCE CO.
1-14-19 [[22](#)]

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 ENGs Commercial Finance Co. at \$60,000.00.

Debtors' motion to value the secured claim of ENGs Commercial Finance Co. ("Creditor") is accompanied by Debtor Mateo Galvan's declaration. Debtors are the owner of a 2013 Peterbilt ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$60,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is 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. 3-1 filed by Engs Commercial Finance Co. 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 or about November 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$65,361.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$60,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

14. [16-25614](#)-B-13 BEVERLY BAKER HARRIS
[KWS](#)-3 Elliot Gale

MOTION TO MODIFY PLAN
12-6-18 [[119](#)]

DEBTOR DISMISSED: 01/14/2019

Final Ruling

The debtor having dismissed the case, the motion to modify is dismissed as moot.

THE COURT WILL PREPARE A MINUTE ORDER.

15. [18-22221](#)-B-13 BENJAMIN/CYNTHIA BELASCO MOTION TO AMEND
[SLE](#)-3 Steele Lanphier 1-9-19 [[50](#)]

No Ruling

16. [18-27525](#)-B-13 TERENCE CAMPOLIETI
[BLG](#)-1 Chad M. Johnson
Thru #17

MOTION TO VALUE COLLATERAL OF
FIRST INVESTORS SERVICING
CORPORATION
1-11-19 [[18](#)]

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 deny the motion to value without prejudice.

Debtor's motion to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Kia Optima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 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).

However, the court finds issue with the Debtor's valuation. Debtor states that the valuation is based upon vehicle's condition, mileage, accessories, a search on KBB.com, and damage to the front and rear bumpers. The Debtor's use of the KBB is a third party industry source that has not been offered or admitted. This means that Debtor's opinion of value is based on hearsay.

In the Chapter 13 context, the replacement value of personal property used by debtors 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 Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

THE COURT WILL PREPARE A MINUTE ORDER.

17. [18-27525](#)-B-13 TERENCE CAMPOLIETI
[JPJ](#)-1 Chad M. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
1-23-19 [[29](#)]

Tentative Ruling

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

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

First, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 18-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, feasibility depends on the granting of a motion to value collateral for First Investor's Servicing Corporation. That motion is denied at Item #16.

The plan filed December 17, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING THE OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

18. [18-27625](#)-B-13 MARIA DE JESUS HOUGH
[JPJ](#)-1 Mikalah R. Liviakis

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-14-19 [[14](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL PREPARE A MINUTE ORDER.

19. [13-27727](#)-B-13 STARR ILOFF
[MET](#)-2 Mary Ellen Terranella

CONTINUED MOTION TO DETERMINE
FINAL CURE AND MORTGAGE PAYMENT
RULE 3002.1
11-24-18 [[55](#)]

Tentative Ruling

The court has reviewed the extensive and detailed December 10, 2018, tentative ruling prepared and posted by Judge McManus before this Chapter 13 case was reassigned to this Department on December 28, 2018. See *dk. 59*. The court has also reviewed and takes judicial notice of the docket in this case. And as contemplated by the December 10, 2018, tentative ruling, the court has also reviewed and considered the Chapter 13 Trustee's ("Trustee") response, *dk. 61*, Wells Fargo Bank N.A.'s ("Wells Fargo") response, *dk. 64*, and Debtor Star Iloff's ("Debtor") reply, *dk. 68*, and all related declarations and exhibits.

Other than as noted below, the court is not persuaded that there is anything in the post-December 10, 2018, briefing that would cause it to alter Judge McManus' tentative ruling. In fact, the court is persuaded by Wells Fargo's admission in its response that it misapplied postpetition payments, *dk. 64* at 3:1-2, that Judge McManus' conclusion that Wells Fargo's accounting does not properly account for all post-petition payments is correct. *Dkt. 59* at 2. Moreover, Wells Fargo's response appears to largely regurgitate its initial November 5, 2018, response to the Trustee's notice of final cure which Judge McManus already considered in his tentative ruling.

The only modification the court finds necessary is a slight adjustment to the Trustee's notation that he disbursed \$124,733.37 postpetition to Wells Fargo when Wells Fargo should have received \$125,020.77- a difference of \$287.40. *Dkt. 61*, ¶ 5. Assuming the Debtor has paid the \$287.40 directly to Wells Fargo as she states in her reply, or subject to that payment if she has not, the court intends to adopt the December 10, 2018, tentative ruling, *dk. 59*, as the final ruling subject to the minor modification noted above. Therefore, Wells Fargo's objection(s) in its initial November 5, 2018, response to the Trustee's notice of final cure and in its supplemental response at *dk. 64* are overruled, the Debtor's motion at *dk. 55* is granted, and the Trustee's notice of final cure at *dk. 48* is approved.

THE COURT WILL PREPARE A MINUTE ORDER.

20. [16-21827](#)-B-13 STEVEN VANDERLICK
[LRR-1](#) Len ReidReynoso
Thru #21

MOTION TO INCUR DEBT
12-19-18 [[35](#)]

Final Ruling

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to lease a 2012 Dodge Ram Chassis Cab with 2012 Century 19.5 feet Carrier. The total lease price is \$48,043.50 less down payment of \$11,028.50. Monthly payments will be \$1,554.00 for 30 months. The lease will be paid directly by the Debtor to Beacon Funding outside the Chapter 13 plan as a post-petition debt. Debtor asserts that this vehicle is necessary for his vehicle towing business. Debtor contends that he has an increase in work through his contract with the California Highway Patrol and that this new vehicle will allow him to keep up with the workload. Due to the increase in work, the Debtor's income has also increased allowing him to afford payments for the new tow vehicle and existing tow vehicles. Debtor has filed amended Schedules I and J.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

21. [16-21827](#)-B-13 STEVEN VANDERLICK
[LRR-2](#) Len ReidReynoso

MOTION TO MODIFY PLAN
12-19-18 [[40](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v.*

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

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

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

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

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed.

Additionally, the Trustee objects to the Debtor's use of exemption California Code of Civil Procedure §§ 703.140(b)(1) to claim her interest in a possible lawsuit against a former roommate. Debtor's interest in a possible lawsuit against the former roommate described in Schedule C does not meet the definition of equity in real or personal property used as a residence under the Homestead Code.

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

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

23. [18-27727](#)-B-13 JOHN MEHL
[SS-3](#) Scott D. Shumaker
And #59

MOTION TO CONFIRM PLAN
1-3-19 [[31](#)]

Final Ruling

CONTINUED TO 2/26/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS
SCHEDULED FOR 2/21/19.

THE COURT WILL PREPARE A MINUTE ORDER.

24. [17-21533](#)-B-13 PRANEE AREND
WW-[5](#) Mark A. Wolff

MOTION TO MODIFY PLAN
12-28-18 [[100](#)]

No Ruling

Final Ruling

The motion has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court 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 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

26. [18-27737](#)-B-13 APRIL/THOMAS AYATCH
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[16](#)]

Final Ruling

CONTINUED TO 3/05/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO
VALUE COLLATERAL OF SANTANDER CONSUMER USA.

THE COURT WILL PREPARE A MINUTE ORDER.

Final Ruling

The motion has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court 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 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

28. [18-27539](#)-B-13 YAROSLAV TKACHUK
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[22](#)]

Tentative Ruling

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

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

First, the Debtor does not have the ability to make plan payments. Debtor's plan calls for payments of \$11,081.00 per month under Section 2.01. Pursuant to Debtor's Schedules I and J, the Debtor's monthly net income is \$1,360.24. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of \$11,081.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.2 of the mandatory form plan.

The plan filed December 17, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING THE OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

29. [18-27143](#)-B-13 TYRONE/REBECCA DAMON CONTINUED MOTION TO VALUE
[PGM](#)-1 Peter G. Macaluso COLLATERAL OF SAFE CREDIT UNION
Thru #30 12-1-18 [[14](#)]

Tentative Ruling

This matter was continued from January 29, 2019. The Debtors were allowed to file by January 31, 2019, a supplemental or amended declaration supporting their opinion of valuation for a 2011 Toyota Rav4. The Debtors timely filed an amended declaration on January 30, 2019. Dkt. 40.

The court's decision is to grant the motion to value for the reasons explained in an opinion to be filed concerning this matter.

30. [18-27143](#)-B-13 TYRONE/REBECCA DAMON MOTION TO CONFIRM PLAN
[PGM](#)-2 Peter G. Macaluso 1-2-19 [[24](#)]

No Ruling

31. [18-27843](#)-B-13 JENEE/JEFFERY SEARLE
[SDH](#)-1 Scott D. Hughes

MOTION TO VALUE COLLATERAL OF
SOLANO FIRST CREDIT UNION
1-14-19 [[14](#)]

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 Solano First Credit Union at \$30,000.00.

Debtors Jenee and Jeffery Searle ("Debtors") filed a motion to value the secured claim of Solano First Credit Union ("Creditor") which is accompanied by Debtors' declaration. Debtors own a 2014 Chevrolet Truck (Highland Package) with approximately 80,000 miles ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$30,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2015 (dkt. 16, ¶ 4), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$33,636.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$30,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

32. [16-27044](#)-B-13 ZULEMA MANGAN
[KWS](#)-2 Scott Sagaria

MOTION TO MODIFY PLAN
12-6-18 [[46](#)]

No Ruling

33. [18-27545](#)-B-13 ERIC FRANCOIS
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
1-23-19 [[13](#)]

Tentative Ruling

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

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

First, Jan Johnson, the Chapter 13 trustee ("Trustee"), ran a search of prior bankruptcies and found that debtor Eric Francois ("Debtor") failed to disclose five prior bankruptcies filed in the last 8 years: 15-24192, 16-22083, 17-25761, 17-27355, and 18-27285. Trustee argues that this failure to disclose the prior cases constitutes bad faith, and the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(3).

Second, Trustee reviewed the filed plan and schedules and notes that the plan filed is signed, but the material provisions are not completed. Also, Schedule D lists secured creditor Arvest Central Mortgage without listing an amount due despite Debtor testifying that he owes approximately \$50,000.00 in pre-petition arrears to this creditor at the meeting of creditors. Trustee argues that Debtor failed to meet the requirements of 11 U.S.C. §§ 1325(a)(1), (3), and (6).

Third, the Debtor has not provided the Trustee with a copy of the most recently filed tax return. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed December 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

34. [18-27246](#)-B-13 WANDA MOORE OBJECTION TO DEBTOR'S CLAIM OF
[JPJ](#)-2 Peter G. Macaluso EXEMPTIONS
[Thru #35](#) 1-11-19 [[37](#)]
WITHDRAWN BY M.P.

Final Ruling

Jan Johnson, the Chapter 13 trustee, having filed a notice of withdrawal of his objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar. Dkt. 48.

THE COURT WILL PREPARE A MINUTE ORDER.

35. [18-27246](#)-B-13 WANDA MOORE MOTION TO VALUE COLLATERAL OF
[PGM](#)-1 Peter G. Macaluso AMERICREDIT FINANCIAL SERVICES,
[And #63-64](#) INC.
1-5-19 [[23](#)]

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 deny the motion without prejudice for the reasons stated below.

Debtor's Motion to Value

Debtor Wanda Moore ("Debtor") filed a motion to value the secured claim of Americredit Financial Services, Inc. ("Creditor"), which is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Mustang ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's Opposition

Creditor filed an opposition on January 21, 2019. Dkt. 39.

Creditor argues that the Vehicle should be valued at no less than \$5,500.00. First, Creditor argues that Debtor did not provide a basis, such as repair costs, for the lower valuation. Second, Creditor argues that the proper method for valuing the Vehicle is to start with either a Kelley Blue Book or NADA Guide value, then subtract costs of repair from that value. Until Debtor provides additional information for the lower value, Creditor asserts that the NADA Guide estimate of \$5,500.00 is appropriate.

Debtor's Reply

Debtor filed a reply on February 5, 2019. Dkt. 55. Debtor requests an evidentiary hearing to determine the value of the Vehicle as a disputed material fact.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by Creditor is the claim which may be the subject of the present motion.

Discussion

The Debtor's request for an evidentiary hearing is denied. An evidentiary hearing is unnecessary because the Debtor has not established any disputed issue of fact. The Debtor has not established any disputed issue of fact because the Debtor has not produced any admissible evidence of value to support her motion. The Debtor's declaration, filed in support of the motion, forms an opinion "based on my personal research as I have reviewed local newspapers and trade articles, [sic] web sites such as Kelley Blue Book and NADA." Dkt. 25, ¶ 4. Thus, Debtor's opinion of value is impermissibly based on inadmissible hearsay. Fed. R. Evid. 801-803.

THE COURT WILL PREPARE A MINUTE ORDER.

36. [18-27747](#)-B-13 VIRGINIA HUNT
[JPJ](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[13](#)]

Tentative Ruling

The objection and motion were 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).

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 objection and motion to dismiss by the Chapter 13 Trustee, debtor Virginia Hunt filed an amended plan on February 6, 2019. Dkt. 20. The confirmation hearing for the amended plan is scheduled for April 2, 2019. Dkt. 17. The earlier plan filed December 13, 2018, is not confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

37. [17-23949](#)-B-13 MINNIE DAWSON
[PGM](#)-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
1-5-19 [[43](#)]

No Ruling

Final Ruling

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

The court's decision is to grant the motion and confirm that the automatic stay is not in effect.

The Socotra Opportunity Fund, LLC ("Movant") seeks an order confirming that the automatic stay is not in effect with respect to real estate commonly known as 7652 Coolfields Way, Sacramento, California 95828 ("Property"). The Movant seeks the confirmation on the grounds that debtor Vikash Sharma ("Debtor") had two prior bankruptcy cases that were dismissed, pending within the one year prior to the filing of this case.

On February 26, 2018, Debtor filed a Chapter 13 case (case no. 18-21064). It was dismissed on October 19, 2018. On October 26, 2018, the Debtor filed a Chapter 13 case (case no. 18-26744). It was dismissed on November 27, 2018. The Debtor filed the instant case on December 24, 2018. Thus, this is the Debtor's third bankruptcy filing since February 26, 2018.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on December 24, 2018. See 11 U.S.C. § 362(c)(4)(A)(ii).

COUNSEL FOR THE MOVANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

39. [17-26052](#)-B-13 TANISHA MAVY
Pro Se

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS AS
TRANSMITTED TO BNC FOR SERVICE
12-28-18 [[111](#)]

No Ruling

40. [18-26852](#)-B-13 JIMMY SANTOS AND JULIE OBJECTION TO CLAIM OF CAVALRY
[JPJ](#)-2 MAGHONEY SANTOS INVESTMENTS, LLC, CLAIM NUMBER
Peter L. Cianchetta 2
12-11-18 [[35](#)]

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 (9th 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. 2 of Cavalry Investments, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Claim No. 2. The claim is asserted to be unsecured in the amount of \$9,948.40. 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 proof of claim, the last payment was received on or about July 5, 2011 (POC 2, p. 6), which is more than four years prior to the filing of this case. Hence, when the case was filed on October 31, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., California Code of Civil Procedure § 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

41. [18-24153](#)-B-13 GERALDINE BAUGHMAN MOTION TO MODIFY PLAN
[MOH](#)-1 Michael O'Dowd Hays 12-28-18 [[44](#)]

No Ruling

42. [18-27555](#)-B-13 MATTHEW SLAGLE
[JPJ](#)-1 Mikalah R. Liviakis
And #65-66

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
1-24-19 [[27](#)]

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).

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

Subsequent to the filing of the objection, debtor Matthew Slagle filed an amended plan on February 3, 2019. Dkt. 37. The confirmation hearing for the amended plan is scheduled for March 12, 2019. Dkt. 36. The earlier plan filed December 3, 2018, is not confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

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 One Main Financial at \$2,000.00.

Debtor Edith Kuehnau ("Debtor") filed a motion to value the secured claim of One Main Financial ("Creditor"), which is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Toyota Corolla with approximately 160,000 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,000.00 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 OneMain is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a money loan of \$6,285.26. Dkt. 14, ¶ 5. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$2,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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 deny without prejudice the motion to extend automatic stay.

Debtor Donna Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 October 29, 2018, due to Debtor's failure to timely confirm a Chapter 13 plan (case no. 18-23674, dkt. 49 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 she misunderstood when the first plan payment became due and, due to that misunderstanding, became delinquent and did not have sufficient income to cure that delinquency. Debtor broadly claims that she "reduced some of [her] liabilities" in order to prosecute this case. Dkt. 13, ¶¶ 3, 4.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.¹

THE COURT WILL PREPARE A MINUTE ORDER.

¹The court also notes that the Internal Revenue Service was not served on all addresses required by Local Bankruptcy Rule 2002-1(c). Dkt. 14, p. 3.

45. [16-20763](#)-B-13 LAWRENCE/CHYANNE MICALLEF MOTION TO MODIFY PLAN
[WW-4](#) Mark A. Wolff 1-8-19 [[71](#)]

No Ruling

46. [18-27563](#)-B-13 KIM CLARK
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[26](#)]

No Ruling

47. [18-26664](#)-B-13 DEWAYNE DIXON
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1-1
12-5-18 [[19](#)]

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 (9th 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. 1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of \$2,939.11. 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 proof of claim, the last payment was received on or about July 31, 2009 (POC 1, p. 5), which is more than four years prior to the filing of this case. Hence, when the case was filed on October 23, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., California Code of Civil Procedure § 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

48. [18-26566](#)-B-13 JOSEPH/ROSEMARY ROSS
[JPJ](#)-1 Gabriel E. Liberman

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
12-5-18 [[16](#)]

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 (9th 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. 1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of \$6,712.00. 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 proof of claim, the last payment was received on or about January 2, 2009 (POC 1, p. 6), which is more than four years prior to the filing of this case. Hence, when the case was filed on October 23, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., California Code of Civil Procedure § 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

49. [18-27566](#)-B-13 MARGUERITE THOMAS
Candace Y. Brooks

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON TRUST, N.A.
1-14-19 [[14](#)]

Final Ruling

Creditor Wilmington Trust, National Association, not in its individual capacity, but solely as trustee for MFRA Trust 2014-2, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC ("Creditor") having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed December 4, 2018, will be confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

50. [18-26867](#)-B-13 BAYARDO/LUCILLA VILCHEZ OBJECTION TO CLAIM OF CAVALRY
[JPJ](#)-2 Joseph Angelo SPV I, LLC, CLAIM NUMBER 1
12-12-18 [[17](#)]

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 (9th 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. 1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of \$17,596.10. 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 proof of claim, the last payment was received on or about April 14, 2010 (POC 1, p. 4), which is more than four years prior to the filing of this case. Hence, when the case was filed on October 31, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., California Code of Civil Procedure § 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

51. [18-27568](#)-B-13 BARBARA/TONY PATTON
[JPJ](#)-1 David P. Ritzinger

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-19 [[17](#)]

No Ruling

Tentative Ruling

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

The court's decision is to grant the motion to sell.

Debtor's Motion to Sell

Debtor Tamara Cook ("Debtor") proposes to sell the property described as 9859 Buena Vista, Loma Rica, California 95901 ("Property").

Proposed purchasers Joseph and Melisa Galea ("Buyers") agreed to purchase the Property for \$429,000.00, with "earnest money" to be \$1,000.00. Dkt. 33, p. 20, 21.

Debtor requests that the two secured interests, with approximate balances due of \$212,219.95 and \$71,632.64, be paid upon the close of escrow, and that the approximate balance of \$80,000.00 in net proceeds be deposited with the Chapter 13 trustee to pay off all unsecured creditors, less the \$75,000.00 claimed homestead exemption. Dkt. 30, ¶¶ 1, 5.

Creditor 1's Conditional Non-Opposition

Wells Fargo Bank, N.A., its assignees and/or successors, by and through its servicing agent Wells Fargo Bank - Home Equity Group ("Creditor 1"), filed a conditional non-opposition on February 4, 2019. Dkt. 37.

Creditor 1 holds the second deed of trust, and requests that the order state that Creditor 1 retain the lien until the balance is paid in full, or an amount less than the full payoff pursuant to the written consent of Creditor 1. Creditor 1 also requests the following language be added to the order approving the sale:

The loan secured by a second lien on real property located at 9859 Buena Vista Dr, Marysville, CA 95901 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a nonexpired contractual payoff statement received directly from Wells Fargo Bank - Home Equity Group, servicing agent for, Wells Fargo Bank, N.A.. [sic]

Dkt. 37.

Creditor 2's Statement of Position

Wells Fargo Bank, N.A. ("Creditor 2") filed a statement of position on February 5, 2019. Dkt. 38.

Creditor 2 does not foresee any dispute over the validity or amount of its claim, but requests that, if a dispute arises, that \$10,000.00 be segregated into an interest-bearing account pending further order from the court to allow the recovery of reasonable attorney's fees and costs. Dkt. 38.

Discussion

The Bankruptcy Code permits a Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. However, post-confirmation, whether a Chapter 13 debtor is required to seek court approval is a novel question in the Ninth

Circuit. At least one court in another circuit has held that a post-confirmation debtor does not require court approval. *In re Walker*, 20 B.R. 372, fn 1 (E.D. Va. 1982) ("Upon confirmation title to the property of the estate vests in the debtors. 11 U.S.C. § 1327(c). The Debtors had an unrestricted right to dispose of the real estate."). This approach is consistent with the interpretation of the effect of both 11 U.S.C. §§ 1306(a) and 1327(b) in the Ninth Circuit. See *In re Jones*, 657 F.3d 921, 927-29 (9th Cir. 2011) (describing the inherent conflict between 11 U.S.C. §§ 1306(a) and 1327(b) and other circuits' approaches, and rejecting the estate preservation approach); see also *In re Clark*, 2015 WL 6164003 *4 (E.D. Cal. 2015) (citing to *In re Thiel*, 2015 WL 2398555 *3-4 (Bankr. Idaho 2015), and stating that property that reverts in the debtor and is not specifically reserved to the estate is not subject to § 363); see also *In re Jones*, 420 B.R. 506, 514, 517 (B.A.P. 9th Cir. 2009) (adopting estate termination approach, except for property clearly reserved for the bankruptcy estate in the plan or order confirming plan).

Here, the Property reverted in Debtor according to the confirmed plan, and was not reserved to the estate by the confirmed Chapter 13 plan or the order confirming plan (dks. 5, 24). Thus, this is not a sale of property of the estate.

Nevertheless, the court is cognizant of Local Bankruptcy Rule 3015-1(h)(1) which states that "[e]xcept for transfers made in the ordinary course by a business debtor, prior to completion of payments under the applicable plan, the debtor shall not sell or transfer property or incur debt except as provided herein." The "except as provided herein" requires Trustee approval for sales of "real . . . property with a value of \$1,000.00 or more other than in the ordinary course of business." LBR 3015-1(h)(1)(D).

Inasmuch as the Debtor has given no indication as to whether the proposed sale of the Property is or is not in the ordinary course, and because the local rule applies to sales of all real property before plan payments are completed to avoid potential disclosure issues at the conclusion of the plan term, the court will grant the motion and approve the sale, provided that all creditors secured by an interest in the Property are paid in full.

No other or further relief is provided. All requests for additional terms in the sale order and the segregation of sale proceeds are denied.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

53. [18-26272](#)-B-13 PAULETTE PERFUMO
[TBG](#)-1 Stephan M. Brown

MOTION TO CONFIRM PLAN
1-2-19 [[28](#)]

No Ruling

54. [18-27077](#)-B-13 ANDREW/DIANE GARCIA
[HDR](#)-1 Harry D. Roth
Thru #55

MOTION TO VALUE COLLATERAL OF
WESTLAKE SERVICES, LLC
1-10-19 [[16](#)]

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 Westlake Services, LLC at \$1,000.00.

Debtors Andrew and Diane Garcia ("Debtors") filed a motion to value the secured claim of Westlake Services, LLC ("Creditor"), which is accompanied by Debtor Diane's declaration. Debtors are the owners of a 2007 Chrysler 300 with approximately 135,000 miles ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$1,000.00 as of the petition filing date based on the Vehicle being over 10 years old, having 135,000 miles, the Vehicle having been involved in a prior accident, and the Vehicle having been stolen and returned by the police which would be disclosed to any potential buyers. Dkt. 18, p. 2. As the owner, Debtor Diane'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. 8 filed by Portfolio Recovery Associates, LLC is the claim which may be the subject of the present motion. The proof of claim asserts that the Vehicle has a value of \$4,000.00. POC 8, p. 2.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$6,061.87. 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 \$1,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

55. [18-27077](#)-B-13 ANDREW/DIANE GARCIA
[HDR](#)-2 Harry D. Roth

MOTION TO VALUE COLLATERAL OF
AARON'S, INC.
1-10-19 [[21](#)]

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 Aaron's Inc. at \$100.00.

Debtors Andrew and Diane Garcia ("Debtors") filed a motion to value the secured claim of Aaron's Inc. ("Creditor"), which is accompanied by debtor Diane's declaration. Debtors are the owners of "one television" ("Property"). Debtors seek to value the Property at a replacement value of \$1.00 as of the petition filing date. Dkt. 21, ¶ 5; dkt. 23, ¶ 6. Debtors assert this value is consistent with the value asserted in Schedule A and in their prior bankruptcy; however, on reviewing the schedules in this case and the prior bankruptcy case, it appears Debtors valued the Property at \$100.00, not \$1.00. Dkt. 1, p. 14; case no. 17-24058, dkt. 19, p. 6. As the owner, Debtors' opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

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 time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement is \$316.00, as stated in the Debtor's Schedule D. Dkt. 1, p. 24. Debtors provided no evidence on the condition of the Property, but assert that the price a retail merchant would charge for the Personal Property is \$1.00 in their motion and \$100.00 in their Schedules and prior bankruptcy case. With either value, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The court finds that the Schedules from this case and the prior bankruptcy case are more credible statements of value, and the secured claim is determined to be in the amount of \$100.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

56. [18-25088](#)-B-13 DANIEL MASSEY
[JPJ](#)-2 Peter L. Cianchetta

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
1-10-19 [[34](#)]

No Ruling

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 continue this matter to March 19, 2019, at 1:00 p.m. for the reasons stated below.

Debtor's Motion to Value

Debtor Dawn Haskins ("Debtor") filed a motion to avoid the lien of Citibank N.A. ("Creditor") against real property commonly known as 4515 Chico Street, Shasta Lake, California 96019 ("Property").

January 22, 2019 Civil Minutes

Pursuant to Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rule of Bankruptcy Procedure 9024, the court *sua sponte* vacated and set aside the minutes entered on January 22, 2019, and restored the matter to calendar for February 12, 2019, at 1:00 p.m. Dkts. 119, 120.

Discussion

Creditor is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" FED. R. BANKR. P. 7004(h). The certificate of service that correspond with the motion reflect that Creditor was served as follows: "AGENT FOR SERVICE OF PROCESS, CITIBANK (SOUTH Dakota [sic]) N.A., 701 E 60th STREET N, MCN 2135, SIOUX FALLS, SD 57104-0432 VIA CERTIFIED MAIL." Dkt. 118.¹ In other words, service on Creditor was not directed to an officer.

Service on Creditor in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) where service was not solely to the attention of an officer of an insured depository institution. *See In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dkts. 24, 26). Other judges in this district have as well. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters where service was not solely to an officer of an insured depository

¹The court notes that this is Debtor's second attempt at filing the motion to value, which was denied on the same grounds on December 3, 2018. Dkt. 110.

institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). See *In re Petty*, No. 12-24999 (E.D. Cal. 2012). In this case, for reasons of judicial economy, the court will do the latter.

Therefore, for the foregoing reasons, it is ordered that in lieu of a dismissal without prejudice the hearing on the Debtor's motion to value the collateral, dkt. 112, is continued to March 19, 2019, at 1:00 p.m.

It is further ordered that the Debtor shall re-serve Creditor by certified mail to the attention of an officer of the institution (and only to an officer of the institution) by no later than February 19, 2019, and file a certificate of service.

THE COURT WILL PREPARE A MINUTE ORDER.

Final Ruling

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors Brandon and Tracy McBroom have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

59. [18-27727](#)-B-13 JOHN MEHL
SS-5 Scott D. Shumaker
See Also #23

MOTION BY SCOTT D. SHUMAKER TO
WITHDRAW AS ATTORNEY O.S.T.
2-4-19 [[64](#)]

Tentative Ruling

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

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

Scott D. Shumaker ("Movant"), attorney for Debtor, moves to withdraw as attorney because the attorney client relationship has deteriorated. Movant feels that he can no longer represent the Debtor because he is being asked to do things that in his professional opinion may not be authorized under existing law and may subject Attorney to Rule 11 and/or state bar sanctions if he were to do as Debtor instructs, he has learned certain facts that make it impossible to continue representation, he and the Debtor are not aligned as to the tactics and legal theories to pursue, and Debtor's adult son has been actively interfering with the attorney client relationship.

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

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

California Rule of Professional Conduct 3-700 provides that:

(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

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

client in other matters shall withdraw from employment, if:

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

(C) Permissive Withdrawal.

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

- (1) The client
 - (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
 - (b) seeks to pursue an illegal course of conduct, or
 - (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
 - (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
 - (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
 - (f) breaches an agreement or obligation to the member as to expenses or fees.
- (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or
- (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or
- (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or
- (5) The client knowingly and freely assents to termination of the employment; or
- (6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The Movant asserts that his continued representation of the Debtor is not feasible because continued representation may be in violation of Rule 11 and California Rules of Professional Conduct. Movant contends that his withdrawal will not cause any prejudice to the Debtor or creditors insofar as this case is in its infancy and new counsel could readily step in without causing significant delay in the administration of this case. These are cause for permitting the Movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C) (1) (d) & (f).

The court will permit the Movant's withdrawal from this bankruptcy case. The motion

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

60. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON CONTINUED MOTION TO CONVERT
[JPJ](#)-1 Mary Ellen Terranella CASE TO CHAPTER 7 AND/OR MOTION
Thru #61 TO DISMISS CASE
See Also #8 8-29-18 [[42](#)]

No Ruling

61. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON CONTINUED MOTION TO MODIFY PLAN
[MET](#)-2 Mary Ellen Terranella 9-25-18 [[48](#)]

No Ruling

62. [17-21139](#)-B-13 ELIZABETH EIDE CONTINUED MOTION TO MODIFY PLAN
[PSB](#)-3 Pauldeep Bains 12-17-18 [[73](#)]

Tentative Ruling

This matter was continued from February 5, 2018. The motion was originally set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor Elizabeth Eide ("Debtor") has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. However, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and cannot be confirmed. See *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380-1 (2010) (explaining that bankruptcy courts have an obligation to review a chapter 13 plan to ensure that it complies with all applicable provisions of the Bankruptcy Code).

The court's review of the claims registry shows priority claims of \$16,019.62 filed by the Internal Revenue Service (POC 3-1) and \$1,340.24 filed by the Franchise Tax Board (POC 9-2). Because the plan only proposes payment of \$16,019.62 of priority unsecured claims, the plan does not provide for the full payment of all claims entitled to priority. Thus, the plan does not comply with 11 U.S.C. § 1322(a)(2) and cannot be confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

63. [18-27246](#)-B-13 WANDA MOORE
[EAT](#)-1 Peter G. Macaluso
Thru #64
See Also #34-35

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
WILMINGTON TRUST, NATIONAL
ASSOCIATION
1-2-19 [[20](#)]

Tentative Ruling

This matter was continued from February 5, 2018. The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection to confirmation.

Creditor Wilmington Trust, National Association, not in its Individual Capacity, but solely as Trustee for MFRA Trust 2016-1 ("Creditor") filed an objection to confirmation on the following grounds.

First, Creditor advised debtor Wanda Moore ("Debtor") before filing its proof of claim that the approximate prepetition arrears totals \$22,105.04 while the plan proposes to cure \$22,620.00 of prepetition arrears. A review of the court's claims registry shows that Creditor filed Proof of Claim No. 6 asserting \$22,098.08 in prepetition arrears.

Second, Debtor listed monthly income totaling \$4,121.09, with \$600.00 per month of contributions from Debtor's children. However, there is no statement from the Debtor's children assuring that the funds will be available through the duration of the plan. Thus, Creditor argues that Debtor has not met her burden of demonstrating that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015). The court agrees.

The objection regarding the minor discrepancy will be resolved at the February 12, 2019, hearing. The Debtor was required to file and serve Creditor (by email or facsimile) with declarations of any person funding the plan by 5:00 p.m. on Friday, February 8, 2019. If the Debtor did not timely file and serve declarations, the plan filed December 3, 2018, will not comply with 11 U.S.C. §§ 1322 and 1325(a), the objection will be sustained on feasibility grounds, and the plan not confirmed. No declarations appear to have been filed.

The plan filed December 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING THE OBJECTION WITHIN SEVEN (7) DAYS.

64. [18-27246](#)-B-13 WANDA MOORE
[JPJ](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
1-9-19 [[33](#)]

Tentative Ruling

This matter was continued from February 5, 2018. The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

Chapter 13 Trustee Jan Johnson objects to confirmation on grounds that feasibility of the plan depends on the granting of a motion to value collateral of Americredit Financial. As stated at Item #35, the motion to value has been denied without prejudice.

The Trustee's second objection pertaining to Debtor's claim of exemptions is withdrawn at Item #34.

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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING THE OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

65. [18-27555](#)-B-13 MATTHEW SLAGLE CONTINUED MOTION TO SELL
[MRL](#)-2 Mikalah R. Liviakis 1-14-19 [[16](#)]
Thru #66
And #42

Tentative Ruling

This matter was continued from February 5, 2019, to allow the Chapter 13 Trustee to review Debtor's documents. 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 matter will be determined at the scheduled hearing.

After filing the motion to sell, on January 28, 2018, debtor Matthew Slagle ("Debtor") filed an ex parte motion for voluntary dismissal under 11 U.S.C. § 1307(b). Dkt. 33. Because the Debtor filed that motion to dismiss after Jan Johnson, the Chapter 13 trustee ("Trustee"), questioned the Debtor's truthful disclosure (or more accurately non-disclosure) of potentially valuable assets (dkt. 27) and objected to a number of the Debtor's claimed exemptions as improper (dkt. 30) consistent with *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008), the court denied the motion to dismiss and ordered the Debtor to set any subsequent motion to dismiss for a hearing. Dkt. 34.

Given the court's concern regarding the extent and disclosure of the Debtor's assets and claimed exemptions, it is not appropriate to allow the Debtor to deplete the estate of assets until those concerns are resolved either through the confirmation and exemption objection process or in the context of a hearing on a motion to dismiss in which the court can determine whether conversion rather than dismissal is in the best interest of creditors.

66. [18-27555](#)-B-13 MATTHEW SLAGLE CONTINUED MOTION TO EMPLOY
[MRL](#)-3 Mikalah R. Liviakis COLDWELL BANKER AS REALTOR(S)
1-16-19 [[22](#)]

Tentative Ruling

This matter was continued from February 5, 2019, to allow the Chapter 13 Trustee to review Debtor's documents. 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 matter will be determined at the scheduled hearing.

67. [18-27371](#)-B-13 CHESTER/CLAUDIA PEDIGO
[JPJ](#)-1 Matthew J. Gilbert

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
1-9-19 [[15](#)]

No Ruling