

**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: March 26, 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

**March 26, 2019 at 1:00 p.m.**

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1. [18-26506](#)-B-13 TARILYN ELLIOTT ORDER TO SHOW CAUSE - FAILURE  
Linda D. Deos TO PAY FEES  
2-19-19 [[19](#)]

**Final Ruling**

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

The Order to Show Cause was issued due to Debtor's failure to pay \$71.00 due February 13, 2019. The court's docket reflects that the default was cured on March 11, 2019. The payment constituted the final installment.

**THE COURT WILL ENTER A MINUTE ORDER.**

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

**No Ruling**

### **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 21, 2018, due to delinquency and failure to confirm a modified plan (case no. 17-24000, dkt. 157). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

### **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 states that she has filed the present bankruptcy in order to keep her home and automobile. In the prior bankruptcy, Debtor's second mortgage increased from approximately \$250.00 to \$1,000.00, making it difficult for Debtor to make payments. Since the prior case was dismissed, Debtor's circumstances have changed because she started working a part-time job at the Golden 1 Center to help with her monthly financial obligations. Debtor and Debtor's non-filing husband also receive Social Security income and retirement income.

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.**

4. [18-27116](#)-B-13 RICHARD GRIMES  
[JPJ](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE  
2-22-19 [[31](#)]

**No Ruling**

5. [18-27816](#)-B-13 ANDREW/CATHIE DAVIS ORDER TO SHOW CAUSE - FAILURE  
Thru #6 Peter G. Macaluso TO PAY FEES  
2-20-19 [[25](#)]

**Tentative Ruling**

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

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$77.00 installment when due on February 15, 2019. While the delinquent installment was paid on February 27, 2019, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

**THE COURT WILL ENTER A MINUTE ORDER.**

6. [18-27816](#)-B-13 ANDREW/CATHIE DAVIS CONTINUED OBJECTION TO  
JPJ-1 Peter G. Macaluso CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-5-19 [[22](#)]

**No Ruling**

7. [15-26321](#)-B-13 MARCELINO MANZANO  
[PPR](#)-1 Dale A. Orthner

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
1-25-19 [[72](#)]

CHAMPION MORTGAGE COMPANY  
VS.

**Final Ruling**

Champion Mortgage Company having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

The matter is removed from the calendar.

8. [15-24522](#)-B-13 ANTHONY/ANGELINA BOTELHO CONTINUED MOTION TO CONVERT  
[JPJ](#)-3 Candace Y. Brooks CASE TO CHAPTER 7 AND/OR MOTION  
TO DISMISS CASE  
1-30-19 [[57](#)]

**No Ruling**



9. [14-31023](#)-B-13 JEANITA HARRIS  
[JPJ](#)-2 Scott J. Sagaria

MOTION TO DISMISS CASE  
2-15-19 [[27](#)]

**No Ruling**

10. [14-31025](#)-B-13 MARIO/MEDELYN BUENO  
[JPJ](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE  
2-15-19 [[32](#)]

**No Ruling**

11. [18-27727](#)-B-13 JOHN MEHL  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-19-19 [[85](#)]

DEBTOR DISMISSED: 03/05/2019

**Final Ruling**

The court's decision is to discharge the Order to Show Cause as moot. The case was dismissed on March 5, 2019.

**THE COURT WILL ENTER A MINUTE ORDER.**

12. [19-20237](#)-B-13 STARR ROBINSON  
Julius J. Cherry

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-19-19 [[19](#)]

DEBTOR DISMISSED: 03/20/19

**Final Ruling**

The court's decision is to discharge the Order to Show Cause as moot. The case was dismissed on March 20, 2019.

**THE COURT WILL ENTER A MINUTE ORDER.**

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

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-8-19 [[21](#)]

**Tentative Ruling**

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due March 4, 2019. The court's docket reflects that the default has not been cured.

**THE COURT WILL ENTER A MINUTE ORDER.**

14. [19-20045](#)-B-13 DEBORAH POAG  
Candace Y. Brooks

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-19 [[16](#)]

**Final Ruling**

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

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due February 6, 2019. The court's docket reflects that the default was cured on February 22, 2019. The payment constituted the final installment.

**THE COURT WILL ENTER A MINUTE ORDER.**

15. [19-20046](#)-B-13 ERIC PHILLIPS  
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-19 [[23](#)]

**Final Ruling**

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

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due February 6, 2019. The court's docket reflects that the default was cured on February 21, 2019. The payment constituted the final installment.

**THE COURT WILL ENTER A MINUTE ORDER.**

16. [18-26647](#)-B-13 RANDLE HODGE  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-28-19 [[32](#)]

CASE CLOSED: 03/07/2019

**Final Ruling**

The court's decision is to discharge the Order to Show Cause as moot. The case was dismissed on January 29, 2019, and the case closed on March 7, 2019.

**THE COURT WILL ENTER A MINUTE ORDER.**



17. [19-20049](#)-B-13 RICHARD MENA  
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-19 [[17](#)]

DEBTOR DISMISSED: 02/16/19

**Final Ruling**

The court's decision is to discharge the Order to Show Cause as moot. The case was dismissed on February 16, 2019.

**THE COURT WILL ENTER A MINUTE ORDER.**

18. [18-27555](#)-B-13 MATTHEW SLAGLE CONTINUED MOTION TO CONFIRM  
[MRI](#)-3 Mikalah R. Liviakis PLAN  
**Thru #19** 2-3-19 [[35](#)]

**No Ruling**

19. [18-27555](#)-B-13 MATTHEW SLAGLE MOTION TO SELL  
[MRI](#)-4 Mikalah R. Liviakis 3-4-19 [[56](#)]

**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 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 14 Powers Drive El, Dorado Hills, California ("Property"). This is the second motion to sell Debtor is presenting to the court. After the first motion was approved, the buyer backed out of the sale. Jason Stillway presented the next best offer. Mr. Stillway has agreed to purchase the Property for \$1,325,000.00. Real estate agent commissions of \$66,250.00, secured judgment liens of approximately \$59,555.72, and the first mortgage of \$1,080,930.29 with PNC Bank will be paid through escrow from the proceeds of the sale. Based on the liens on the property and projected closing costs, Debtor expects to receive approximately \$98,499.94 in net proceeds from the sale. Debtor proposes that all of the net sales proceeds be paid directly to Debtor, up to his homestead exemption amount of \$100,000.00.

Creditor Etrade Bank, by and through its servicing agent PNC Bank, National Association, filed a conditional non-opposition to the motion to sell and requests that any order granting Debtor's motion include the following language: "The loan secured by a first lien on real property located at 14 Powers Drive, El Dorado Hills, CA 95762 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 PNC Bank, National Association, servicing agent for, ETRADE Bank."

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.

The request by Creditor Etrade Bank, by and through its servicing agent PNC Bank, National Association, to include additional language in the court's accepted sale order is denied.

The Debtor's request to receive net sale proceeds directly is denied.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION - ACCEPTABLE TO AND APPROVED BY THE TRUSTEE - WITHIN SEVEN (7) DAYS.**

20. [18-25756](#)-B-13 DAVID SIMS  
[JPJ](#)-2 Peter G. Macaluso

MOTION TO DISMISS CASE  
2-22-19 [[59](#)]

**No Ruling**

21. [18-27659](#)-B-13 BRITTANY HOLMES  
Pauldeep Bains

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-14-19 [[19](#)]

**Final Ruling**

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

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due February 11, 2019. The court's docket reflects that the default was cured on March 12, 2019. The payment constituted the final installment.

**THE COURT WILL ENTER A MINUTE ORDER.**

22. [19-20459](#)-B-13 RAQUEL RODRIGUEZ  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-1-19 [[16](#)]

**Tentative Ruling**

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

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$2.00 installment when due on February 25, 2019. While the delinquent installment was paid on March 11, 2019, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

**THE COURT WILL ENTER A MINUTE ORDER.**

23. [18-27962](#)-B-13 GUILLERMO MIRALRIO  
[JPJ](#)-1 W. Steven Shumway

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-13-19 [[23](#)]

### **Tentative Ruling**

This matter was continued from March 5, 2019, to be heard after the continued meeting of creditors set for March 21, 2019. The objection and motion were originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

The Trustee objects to confirmation on grounds that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors, the Debtor has failed to serve upon the Trustee the Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee, and the Debtor has failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to net income from rental property and/or operation of a business.

The Debtor filed a response stating that he has no unsecured creditors, that he has provided the Trustee with the Authorization to Release Information, and that he has filed a detailed statement showing gross receipts and ordinary and necessary expenses.

The plan filed January 8, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

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

24. [19-20362](#)-B-13 DONNA JOHNSON CONTINUED MOTION TO EXTEND  
[MEV-1](#) Marc Voisenat AUTOMATIC STAY  
**Thru #25** 1-28-19 [[11](#)]

**Tentative Ruling**

This matter was continued from March 5, 2019, so that the Debtor could serve the Internal Revenue Service ("IRS") at all addresses required by Local Bankr. R. 2002-1(c). Dkt. 35. Instead of simply serving the IRS with this motion and notice of the continued hearing on it at all required addresses, the Debtor unnecessarily complicated matters and on March 7, 2019, filed a new and separate Motion to Extend the Automatic Stay As to the Internal Revenue Service, which is heard at Item #25. The certificate of service, dkt. 33, associated with the new motion, dkt. 30, reflects that the IRS was correctly served with the new motion - and thus given notice of the Debtor's request to extend the automatic stay consistent with the Debtor's prior (continued) motion at dkt. 11 - at the two addresses required by Local Bankr. R. 2002-1 (Philadelphia and Washington, D.C.) but incorrectly served at the address required by the court's Roster of Governmental Agencies (San Francisco instead of Sacramento). Nevertheless, the court takes judicial notice that the San Francisco address at which the IRS was served is a valid address for the IRS at the Phillip Burton Federal Building & United States Courthouse in San Francisco, California. Therefore, the court concludes that the IRS has received sufficient notice of the Debtor's request to extend the automatic stay.

The Debtor's motion at dkt. 11 will be granted as to the IRS and, as to the IRS, the automatic stay is extended for all purposes consistent with the prior extension as to all parties and for all purposes. See dkts. 34, 35.

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

25. [19-20362](#)-B-13 DONNA JOHNSON MOTION TO EXTEND AUTOMATIC STAY  
[MEV-1](#) Marc Voisenat 3-7-19 [[30](#)]

**Final Ruling**

This motion is 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 as moot the motion to extend automatic stay as to the Internal Revenue Service.

Based on the court's ruling at Item #25 regarding the motion to extend the automatic stay filed at dkt. 11, this motion is moot and is denied as such. It is also untimely under 11 U.S.C. § 362(c)(3)(B) inasmuch as it is impossible to complete the hearing on this motion within 30 days after the January 21, 2019, petition date.

**THE COURT WILL PREPARE A MINUTE ORDER.**

26. [18-25264](#)-B-13 JAMES/LORI PERRY  
[PGM](#)-2 Peter G. Macaluso

CONTINUED MOTION TO MODIFY PLAN  
1-24-19 [[38](#)]

**No Ruling**



27. [19-20068](#)-B-13 MELANIE PAULY MONTERROSA CONTINUED OBJECTION TO  
[JPJ](#)-1 Mary Ellen Terranella CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-13-19 [[20](#)]

**Final Ruling**

CONTINUED TO 4/16/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S OBJECTION TO CLAIM OF FRANCHISE TAX BOARD.

**THE COURT WILL ENTER A MINUTE ORDER.**

28. [19-20077](#)-B-13 JOHN JAMES  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-12-19 [[15](#)]

**Tentative Ruling**

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

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on February 7, 2019. While the delinquent installment was paid on February 21, 2019, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

**THE COURT WILL ENTER A MINUTE ORDER.**

### **Tentative Ruling**

This matter was continued from March 5, 2019, to allow the Debtor additional time to file a declaration by March 19, 2019, from her roommate regarding his financial contribution. The motion was originally 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 January 16, 2019, due to delinquency in plan payments (case no. 18-24211, dkt. 74). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

### **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 does not explain why the previous and present cases were filed, but the court infers from the schedules and plan that they were done to save Debtor's home from foreclosure. Debtor states that her circumstances have changed from the previous case because she now has a roommate and gained government assistance that will add to her monthly income. The Declaration of Brandon Frink was filed on March 20, 2019, stating that Mr. Frink contributes \$1,200.00 to cover rent and his portion of utilities. He states that he has stable employment and can continue to make his contribution for the foreseeable future. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

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.**

30. [12-31689](#)-B-13 DAWN HASKINS CONTINUED MOTION TO AVOID LIEN  
[MWB](#)-5 Mark W. Briden OF CITIBANK, N.A.  
**Thru #31** 12-11-18 [[112](#)]

**Final Ruling**

This matter was continued from February 12, 2019, to provide Debtor additional time to re-serve Citibank, N.A. by certified mail to the attention of an officer of the institution by no later than February 19, 2019, and file a certificate of service. Dkt. 122. Debtor filed a new and separate Motion for Order Avoiding Judgment Lien Impairing Exempt Property, which is heard at Item #31. This motion is therefore dismissed as moot.

**THE COURT WILL ENTER A MINUTE ORDER.**

31. [12-31689](#)-B-13 DAWN HASKINS MOTION TO AVOID LIEN OF  
[MWB](#)-6 Mark W. Briden CITIBANK, N.A.  
2-19-19 [[124](#)]

**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 without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtor's property commonly known as 4515 Chico Street, Shasta Lake, California ("Property").

Although the Debtor asserts that judgment was entered against it in favor of Creditor in the amount of \$3,281.82 and entered on September 1, 2011, no abstract of judgment was filed as an exhibit. Instead, Debtor has filed as an exhibit a National Title Insurance document that purports to show a recorded abstract of judgment. However, that title report is not authenticated which means, at best, it is inadmissible hearsay.

The court cannot determine whether the fixing of this judicial lien impairs the Debtor's exemption of the real property or whether its fixing is avoided pursuant to 11 U.S.C. § 522(f)(2)(A). Without an abstract of judgment to support its assertion, the Debtor has failed to meet the burden of establishing all elements of § 522(f). *See In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009). And even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief unless the Debtor has established a prima facie basis for relief under § 522(f). *In re Schneider*, 2013 WL 5979756 at \*3 (Bankr. E.D.N.Y. 2013). The Debtor has not met that burden. Therefore, the Debtor's motion is denied without prejudice.

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

**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.**

33. [19-20397](#)-B-13 JASMINE SMITH  
Scott D. Shumaker

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-27-19 [[28](#)]

**Tentative Ruling**

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due February 22, 2019. The court's docket reflects that the default has not been cured.

**THE COURT WILL ENTER A MINUTE ORDER.**