UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 4, 2017 at 1:00 p.m.

1.	17-20400-B-13 JPJ-1	LANELLE ROGERS Scott D. Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-9-17 [24]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 13, 2017. The confirmation hearing for the amended plan is scheduled for May 2, 2017. The earlier plan filed January 23, 2017, is not confirmed.

The court will enter an appropriate minute order.

2. 17-20301-B-13 GENEVA ESQUIVEL
JPJ-1 Karen Pine

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-6-17 [29]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

The Trustee objects to confirmation of the plan on the grounds that the plan fails to specify a specific post-petition arrearage amount, interest rate, and monthly dividend owed to PNC Mortgage for the first and second mortgages. The plan lumps these post-petition arrears in with the pre-petition amounts owing and the dividends to be paid to PNC Mortgage. The Trustee states that it is amenable to clarifying this information in the order confirming the plan since it would not affect any other provisions of the plan and it does not appear that the overall plan payment or amount paid to these creditors would change as a result of these clarifications.

The Debtor has filed a response stating that is has prepared an order confirming plan that clarifies the monthly dividends to pay the mortgage lienholder for both pre-petition arrears and post-petition arrears.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed February 1, 2017, is confirmed.

The court will enter an appropriate minute order.

3. 17-20407-B-13 FORREST GARDENS
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [41]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 16, 2017. The confirmation hearing for the amended plan is scheduled for April 18, 2017. The earlier plan filed January 23, 2017, is not confirmed.

The court will enter an appropriate minute order.

4.	17-20507-B-13 JPJ-1	TIMOTHY GWEN AND DENISE MONCUS-GWEN Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-9-17 [16]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The Chapter 13 Trustee filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case. The objection and motion are 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 entered an order confirming the plan on March 16, 2017.

The court will enter an appropriate minute order.

5. 17-21510-B-13 RICHARD PATRICK MOTION TO EXTEND AUTOMATIC STAY
PSB-1 Pauldeep Bains 3-14-17 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 7, 2017, after Debtor, who was pro se, filed a voluntary motion to dismiss case in order to seek the assistance of knowledgeable bankruptcy counsel and because the Debtor had failed to complete the required credit counseling course (case no. 17-20800, dkt. 18). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the previous case was filed in order to save his home from foreclosure. Debtor states that his circumstances have changed because he has retained legal counsel to represent him in this bankruptcy and has completed the necessary credit counseling course.

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

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

The court will enter an appropriate minute order.

6. 17-20121-B-13 JESUS/OLGA ARROYO — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
JPJ-1 Scott D. Hughes — 2-22-17 [15]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

Pursuant to California Code of Civil Procedure §§ 703.140(a)(1) and (a)(3), a debtor may claim certain property as exempt under either § 703 or § 704 but not a combination of both. According to Schedule C, the Debtors have claimed interest in real and/or personal property as exempt under California Code of Civil Procedure § 703 and § 704. The Debtors may not utilize some of the exemptions available under § 703 and other exemptions available under § 704.

Additionally, the Debtors have claimed their interest in a bank account with Wells Fargo Bank with a value of $4,000.00 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $4,000.00. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtors may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. The Debtors also bear the burden of proving the extent of earnings in the deposit account that are claimed as exempt. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-337 (9th Cir. BAP 2016); *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal 2015). Debtors have not met that burden.

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

The court will enter an appropriate minute order.

7. 15-29322-B-13 JAMES/TRACEE LEWIS
Ashley R. Amerio

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
1-27-17 [129]

Tentative Ruling: The Debtors' Objection to the Notice of Default and Application to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to not dismiss the case.

The Notice of Default and Application to Dismiss case was submitted by Jan Johnson, Chapter 13 Trustee, because Debtors failed to make payments due under the plan totaling $2,650.00. The Debtors have filed a response stating that they cured this payment on February 17, 2017, and have provided a copy of a receipt as Exhibit A. Dkt. 139.

Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

8. 16-28129-B-13 JERRY/JOANNE BENNETT
APN-1 Stephen N. Murphy
Thru #9
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-1-17 [114]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Hyundai Tucson, VIN ending in 0540 (the "Vehicle"). The moving party has provided the Declaration of Magali Escamilla to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Escamilla Declaration provides testimony that Debtor is in arrears totaling $1,355.80. This total consists of 2 post-petition payments, with a total of $877.90 in post-petition payments past due, and 1 pre-petition payments in default, with a pre-petition arrearage of $477.90.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $10,382.12, as stated in the Escamilla Declaration, while the value of the Vehicle is determined to be $9,895.00, as stated in Schedules B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

9.	16-28129-B-13 SNM-11	JERRY/JOANNE BENNETT Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC 3-13-17 [140]

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

The court's decision is to value the secured claim of Wheels Financial Group LLC DBA LoanMart at $5,250.00.

This is Debtors' second motion to value the secured claim of Wheels Financial Group LLC DBA LoanMart ("Creditor") after the first motion was denied without prejudice on January 17, 2017, for insufficient evidence of valuation. Debtors are the owners of a 2008 Ford Ranger ("Vehicle") and seek to value the Vehicle at a replacement value of $5,250.00 as of the petition filing date. 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). In support of their motion, the Debtors have provided the Declaration of Donna Bradshaw, ISA Appraiser for West Auctions.

No objection has been filed by any interested creditors.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Wheels Financial Group, LLC dba 1-800LoanMart 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 loan of $7,177.81 at 91.12% interest. *See* dkt. 31, p. 4. 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 $5,250.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

10. 12-41130-B-13 REEYCE JOHNSON AND NA-TASHA WATSON-JOHNSON
PGM-1 Peter G. Macaluso
MOTION TO APPROVE LOAN MODIFICATION
2-28-17 [37]

Tentative Ruling: The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to permit the loan modification requested provided that the Debtors file amended Schedules I and J by April 7, 2017.

Debtors seeks court approval to incur post-petition credit. Nationstar Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will increase Debtor's mortgage payment from the current $1,902.56 a month to $2,496.31 a month. Although this is an increase in plan payments, it lower than the Notice of Mortgage Payment Change filed on January 20, 2017, which would increase the Debtors' monthly payment to $2,625.64. The modification provides for a fixed rate of 3.625% interest over the life of the loan versus a 4% to 4.875% increase as stated in the Notice of Mortgage Payment Change. The interest rate at 3.625% will begin to accrue on the new principal balance of $490,779.32 as of March 1, 2017. The maturity date will be March 1, 2057. The modification will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case or any discharge that the Debtors may receive in this case. The Debtors confirmed plan provides for 6% to general unsecured creditors, who to date have actually received over 30% with 11 months remaining in the Chapter 13.

The motion is supported by the Declaration of Reeyce R. Johnson and Na-Tasha A. Watson-Johnson. The Declaration affirms Debtors' desire to obtain the post-petition financing. Although the monthly mortgage payments will be an increase from what Debtors are currently paying, the Debtors have filed as exhibits updated Schedules I and J showing their increased income. The Debtors must file these schedules to appear as separate amended schedules on the docket.

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 provided that the Debtors file amended Schedule I and J.

The court will enter an appropriate minute order.

11. 16-23233-B-13 JPJ-2 — STACY DEL RIO, Ted A. Greene — CONTINUED MOTION TO DISMISS CASE, 2-3-17 [71]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to not dismiss the case.

This matter was continued from February 28, 2017, to be heard in conjunction with the confirmation hearing of the amended plan filed February 14, 2017, at which time the Debtor was required to become current on plan payments. The motion to confirm plan was granted at Item #12. No objection was filed by the Chapter 13 Trustee to the motion to confirm.

Therefore, cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

12. 16-23233-B-13 TAG-3 — STACY DEL RIO, Ted A. Greene — MOTION TO CONFIRM PLAN, 2-14-17 [78]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The Motion to Confirm Third Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 14, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. 15-26834-B-13 CLYDE HUGHES
MSK-4 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-2-17 [62]

CHAMPION MORTGAGE COMPANY
VS.

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

The court's decision is to deny without prejudice the motion for relief from stay.

Champion Mortgage Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 230 West M Street, Rio Linda, California (the "Property"). Movant has provided the Declaration of Alicia Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Movant assets that the Debtor has failed to maintain property insurance as required under the terms of the reverse mortgage. The force placed insurance default amount is $3,696.00 for the years of October 14, 2015, through October 14, 2017.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $209,740.54 as stated in the Declaration of Alicia Wilson. The value of the Property as asserted by the Movant and accepted by the Debtor is determined to be $255,000.00 as stated in the Movant's motion and supporting exhibits.

Opposition has been filed by the Debtor asserting that it currently has and has always had homeowners insurance with GEICO Insurance Agency, Inc. and that the force place insurance is therefore unnecessary. Debtor argues that the Movant has force placed the insurance on the Property over the span of two years from October 14, 2015, through October 14, 2017, without valid reason. Moreover, there remains equity in the Property in the amount of approximately $45,000.00.

While Debtor objects to the Declaration of Michael S. Kogan because he is counsel for the Movant and lacks personal knowledge to qualify as an expert witness, the Movant's motion is supported by the Declaration of Alicia Wilson, who is a bankruptcy specialist for Champion Mortgage Company and is familiar with its business records.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause does not exist for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

A review of the Debtors exhibits and declaration shows that the Debtor maintained homeowners insurance with GEICO Insurance Agency, Inc. effective September 4, 2016, through September 4, 2017. The Debtor does not provide any evidence that homeowners insurance was maintained from October 14, 2015, through September 3, 2016. Because of this, Movant may assert that force place insurance for October 14, 2015, through September 3, 2016, was necessary.

However, the equity cushion in the Property for Movant's claim provides adequate protection at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). With $45,000.00 in equity and a value of $255,000.00, there is a current equity cushion of

approximately 17.64%. Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

The court shall not issue an order terminating and vacating the automatic stay.

Attorneys' Fees Requested

Movant has not established that there is no equity in the property for Debtor, and has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

14. 15-27135-B-13 SYLVIA GUIDO — MOTION TO MODIFY PLAN
SS-2 Scott D. Shumaker — 2-17-17 [36]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 17, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

15. 17-20341-B-13 LORENA MONTESINOS
JPJ-1 Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [19]

CONTINUED TO 4/18/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO VALUE COLLATERAL OF AFS ACCEPTANCE.

Final Ruling: No appearance at the April 4, 2017, hearing is required. The court will enter an appropriate minute order.

16. 17-21544-B-13 WILLIAM DURBIN MOTION TO EXTEND AUTOMATIC STAY
DBJ-1 Douglas B. Jacobs 3-20-17 [16]
Thru #17

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 7, 2016, after Debtor and his spouse, who had together filed for Chapter 11 relief pro se, had failed to respond to an order to show cause regarding dismissal case for failure to pay fees (case no. 16-23120, 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.

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

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

The Debtor asserts that he and his wife had filed the previous Chapter 11 bankruptcy in an effort to save their home from foreclosure and pursue litigation in state court regarding their second deed of trust held by Aran Investments, Inc. Debtors assert that their circumstances have changed because they have hired legal counsel to represent them in this Chapter 13 bankruptcy.

Objection

Creditor Aran Investments, Inc. ("Creditor") has filed a response asserting that the Debtor should not receive an extension on the automatic stay because this bankruptcy was not filed in good faith. Creditor states that the Chapter 13 plan is not feasible because Debtor's Schedule J does not provide for the monthly mortgage payment owed to Creditor in the amount of $1,187.76, the plan does not provide for the cure of pre-petition arrears owed to Creditor, and the Debtor continues to live at the property despite not tendering any payment toward the Creditor's loan for 107 months. Creditor further argues that the Debtor's filing of the instant petition was merely to delay Creditor's completion of its foreclosure sale.

Discussion

The Debtor asserts that the previous Chapter 11 bankruptcy was filed in an effort to object to the second mortgage held by Creditor. Debtor asserts that his circumstances have changed because the past bankruptcy was filed pro se whereas in this bankruptcy the Debtor is represented by legal counsel. However, the Debtor has provided no evidence as to his ability to cure the arrears owed on the home. Indeed, as stated at

Item #17, the Debtor is past due on 107 pre-petition payments totaling $127,090.32. Under the Debtor's current plan, at 36 months that requires a monthly payment of $3,530.29 which, according to Schedules I and J, is impossible for the Debtor to make. The Creditor's motion for relief from automatic stay at Item #17 was granted.

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.

The motion is denied and the automatic stay is not extended for all purposes and parties.

The court will enter an appropriate minute order.

17. 17-21544-B-13 WILLIAM DURBIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRG-1 Douglas B. Jacobs — 3-15-17 [9]

ARAN INVESTMENTS, INC. VS.

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

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

Aran Investments, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 22615 Silverlode Road, Palo Cedro, California (the "Property"). Movant has provided the Declaration of Kamran Mohammadi to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant asserts that there are 0 post-petition defaults but 107 pre-petition payments in default, with a total of $127,090.32 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $564,796.58 (which includes $309,076.00 secured by Nationstar Mortgage's first deed of trust and $255,720.58 secured by Movant) as stated in the Declaration of Kamran Mohammadi and Schedule D filed by the Debtor on March 22, 2017. The value of the Property is determined to be $300,000.00 as stated in Schedules A and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n*

of Texas v. Timbers of Inwood Forest Associates. Ltd., 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property.

Finally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor filed his first petition on May 13, 2016, under Chapter 11.

The Debtor has engaged in a sequence of efforts to prevent Movant from foreclosing on the Property. The Debtor had filed a previous Chapter 11 bankruptcy on May 13, 2016, that was subsequently dismissed on October 7, 2016, but during the pendency of which the court had granted Movant's motion for relief from stay. On October 6, 2017, Movant recorded a notice of default and election to sell under deed of trust. To prevent the foreclosure sale, the Debtor thereafter filed a complaint in Shasta County Superior Court on December 13, 2016, seeking to enjoin the Movant's sale of the real property. The Debtor subsequently filed an ex parte application for temporary restraining order on January 4, 2017, when the Movant recorded a notice of trustee's sale. When the state court denied the preliminary injunction and dissolved the TRO on March 6, 2017, Movant filed for Chapter 13 relief on March 9, 2017. The court finds that the Debtor's past bankruptcy filing coupled with the Debtor's actions after the dismissal of the case and in response to the Movant's anticipated sale of the Property were part of a scheme to delay, hinder, or defraud creditors, this creditor in particular, from exercising their rights against the Property.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

18. 17-21445-B-13 LATARUS JAMES
JLK-1 James L. Keenan

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
3-7-17 [8]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

This matter was continued from March 21, 2017, in order for the Debtor to file a declaration stating why her previous case was filed and how her circumstances have changed. The Debtor filed a declaration on March 28, 2017.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 29, 2016, after Debtor failed to make plan payments (case no. 16-21184, dkt. 46). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The motion states that Debtor failed to make plan payments in the previous case because she lost her job but has now gained employment and can perform under the terms of the proposed plan. The Debtor's declaration filed March 28, 2017, supplements Debtor's motion by stating that she lost her job from missing work due to a medical emergency that arose within her immediate family. The declaration states that the medical emergency is now resolved and that the Debtor is now employed with the County of Sacramento, which will provide her with stable income and allow her to succeed in the present bankruptcy.

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.

The court will enter an appropriate minute order.

19. 15-26248-B-13 ANDREW/EMILY TWISS — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 W. Scott de Bie — 2-23-17 [61]

SETERUS, INC. VS.

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association ("Movant"), seeks relief from the automatic stay with respect to the real property commonly known as 485 Miller Court, Dixon, California (the "Property"). Movant has provided the Declaration of Megan Snyder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Snyder Declaration states that there are 3 post-petition defaults for the months of December 1, 2016 through February 1, 2017. This calculates to a total of $3,771.03 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $365,845.57 (which includes $328,945.57 secured by Movant's first deed of trust) as stated in the Snyder Declaration and supported by Schedule D filed by the Debtors. The value of the Property is determined to be $289,000.00 as stated in Schedules A and D filed by Debtors.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property.

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.

Attorneys' Fees Requested

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

As to the extent there is any co-debtor stay under § 1301, it is terminated on the same terms and conditions as the Debtor.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

20. 15-28948-B-13 RICHARD/GERINE CAYLOR MOTION TO MODIFY PLAN
JSO-5 Jeffrey S. Ogilvie 2-23-17 [86]

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

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,000.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of $1,000.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan terms are unclear. The plan proposes payments of $1,000.00 per month for months 14-60, but further proposes payments of $3,000.00 per month for months 14, 15, and 16. It is unclear if the plan payment for months 14, 15, and 16 is $1,000.00, $3,000.00, or $1,000.00 plus $3,000.00 for a total of $4,000.00.

Third, if the plan payments for months 14, 15, and 16 is $3,000.00 or $4,000.00, the Debtors do not appear to be able to make those payments because their monthly net income is only $1,018.58 according to Schedules I and J filed February 23, 2017. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the plan changes the treatment of PNC Mortgage from Class 1 to Class 4 as a result of a permanent loan modification. The Debtors have presented no evidence that the lender has consented to or is considering a loan modification. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, feasibility depends on the court approving a loan modification. The Debtors have not filed, set for hearing, or served on all parties a motion to approve the loan modification. The Debtors have not complied with Local Bankr. R. 3015-1(i)(1)(E).

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

The court will enter an appropriate minute order.

21. 17-20249-B-13 ANGELICA OFFENBECHER — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Steele Lanphier — 2-22-17 [21]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

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

Pursuant to California Code of Civil Procedure §§ 703.140(a)(1) and (a)(3), a debtor may claim certain property as exempt under either § 703 or § 704 but not a combination of both. According to Schedule C, the Debtor has claimed interest in real and/or personal property as exempt under California Code of Civil Procedure § 703 and § 704. The Debtor may not utilize some of the exemptions available under § 703 and other exemptions available under § 704.

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

The court will enter an appropriate minute order.

22. 16-23654-B-13 JOANN GOWANS MOTION TO CONFIRM PLAN
SS-6 Scott D. Shumaker 2-21-17 [63]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 21, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

23. 17-20554-B-13 VALERIE WALKER
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [19]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

There being no other objection to confirmation, the plan filed January 27, 2017, was confirmed on March 29, 2017.

The matter is removed from the calendar.

The court will enter an appropriate minute order.

24. 16-22856-B-13 AARON HUTCHINSON MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 2-21-17 [60]

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

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

First, the plan cannot be effectively administered because the modified plan does not specify a complete cure of all the post-petition arrearage owed to Select Portfolio Servicing/Bayview Loan Servicing, LLC for the months of December 2016 and January 2017. Select Portfolio Servicing/Bayview Loan Servicing, LLC asserts that it does not consent to the cure of its post-petition arrears over the span of 52 months.

Second, the plan underestimates the amount of pre-petition arrears owed to Portfolio Servicing/Bayview Loan Servicing, LLC in Class 1 at $13,752.00. The proof of claim shows pre-petition arrears in the amount of $19,579.00. The plan also understates the amount of monthly contract installment to Servicing/Bayview Loan Servicing, LLC in Class 1 at $2,342.27. The proof of claim shows the monthly contract installment amount is $2,352.59. The plan will take approximately 72 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the plan payment in the amount of $3,050.00 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 aggregate of the monthly amounts plus the Trustee's fee is $3,221.88. The plan does not comply with Section 4.02 of the mandatory form plan.

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

Bayview Loan Servicing, LLC has not established either a contractual or statutory basis for the award of attorneys' fees in connection with its objection. Bayview Loan Servicing, LLC is not awarded any attorneys' fees. Additionally, Bayview Loan Servicing, LLC's request for dismissal of the Chapter 13 proceeding is denied.

The court will enter an appropriate minute order.

25.	16-27856-B-13 ADR-2 **Thru #26**	BENJAMIN/JULIA ARREGUY Justin K. Kuney	MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 3-3-17 [33]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to value the secured claim of JP Morgan Chase Bank, N.A. at $0.00.

Debtors' motion to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 3807 Glenfaire Court, Rocklin, California ("Property"). Debtors seek to value the Property at a fair market value of $454,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 12 filed by JPMorgan Chase is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $500,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $88,543.54. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

26.	16-27856-B-13 JPJ-2	BENJAMIN/JULIA ARREGUY Justin K. Kuney	MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 3-1-17 [29]

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

The court's decision is to not convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted because Debtors have failed to prosecute this case following the court's denial of plan confirmation on January 24, 2017, and that the Debtors have caused unreasonable delay that is prejudicial to creditors. *See* 11 U.S.C. §1307(c)(1).

A review of the docket shows that Debtors have filed a new plan on March 14, 2017, and the confirmation hearing of the plan is scheduled for May 2, 2017. The Debtors assert that the new plan substantially increases the payment to unsecured creditors and that they have addressed feasibility concerns by either obtaining orders or setting for hearing motions to value collateral. *See* Item #25.

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtors have filed an amended plan and a motion to value collateral of JP Morgan Chase Bank, N.A., which was granted at Item #25. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

27. 17-20658-B-13 EMILY CLARKVIVIER — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Michael David Croddy — 3-9-17 [22]
Thru #28

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 did not appear at the meeting of creditors set for March 2, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6) because the Debtor's Schedule I coupled with Line #13 reflect anticipated income from Debtor's non-filing spouse upon the sale of the non-filing spouse's business in a separate Chapter 7 proceeding. The anticipated income in the amount of $7,701.89 is not certain and the Debtor may not have the income to fund the proposed plan payments of $1,822.00 for 60 months with 100% dividend to unsecured creditors.

The plan filed January 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

28. 17-20658-B-13 EMILY CLARKVIVIER — OBJECTION TO CONFIRMATION OF PLAN BY FIRST BANK
SBC-1 Michael David Croddy — 3-7-17 [16]

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

The court's decision is to sustain the objection.

First Bank holds a deed of trust secured by real property located at 5353 Silveyville Road, Dixon, California. The creditor asserts that Debtor and her non-filing spouse are co-obligors of a promissory note in favor of First Bank. Although Debtor's plan states that her non-filing spouse is making payments, First Bank asserts that no payments have been made by either the Debtor or her non-filing spouse for a portion of the payment due September 21, 2016, and each subsequent monthly payment due thereafter. The creditor has filed a timely proof of claim in which it asserts $2,129.23 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must

provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed January 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

29.	16-23659-B-13 JPJ-2	ANDREY KIRICHENKO Mark Shmorgon	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 3 2-7-17 [49]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 3 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $11,630.49. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 5, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's Proof of Claim was filed November 3, 2016.

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

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

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

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

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

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

30. 17-20464-B-13 ANATOLY PANASIUK
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [57]

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

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

The Internal Revenue Service filed a priority claim on February 15, 2017, in the amount of $197,034.00. The plan will take approximately 600 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed January 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

31. 13-33466-B-13 MICHAEL JORDAN
BLG-5 Pauldeep Bains
Thru #32

MOTION TO VALUE COLLATERAL OF SACRAMENTO ROUNDTREE HOA
3-21-17 [61]

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

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

The court granted the sale of real property located at 309 Roundtree Court, Sacramento, California, on February 14, 2017. Dkt. 53, 55. The purchase price for the property was $151,000.00, which would pay in full the first deed Bank of America, N.A. and the lien of Sacramento Roundtree Homeowners Association ("Roundtree HOA"). In an effort to close escrow and complete the sale, Placer Title Company requested Roundtree HOA to submit a demand of the balance owed. Roundtree HOA submitted a demand statement in the amount of $37,100.75. Dkt. 63, p. 17.

Debtor disputes the amount to which Roundtree HOA is entitled. Debtor asserts that he and the Chapter 13 Trustee have diligently attempted to resolve the secured amount claimed by Roundtree HOA. Claim No. 3-1 lists a secured claim of $21,091.10 but its supporting documentation shows total arrears of $23,580.86.

The court takes judicial notice of Claim No. 3-1 and interprets the secured claim to be $23,580.86. *See* Claim No. 3-1, pp. 1, 4-5. This secured claim is consistent with the amount paid in escrow. Roundtree HOA has not amended its proof of claim, has never filed or served a notice of payment change, did not oppose the motion to sell real property, and has not opposed this motion to value collateral. Although the Debtor did not file a declaration in support of its motion to value collateral, the court takes judicial notice of the declaration and exhibits filed in support of the motion to sell at dkt. 30.

As of February 28, 2017, the Trustee has disbursed $4,100.00 toward Roundtree HOA arrears, $8,151.00 toward ongoing payments, and $122.50 toward late fees. Dkt. 63, Exhs. C-E. The court finds the balance owed on pre-petition arrears to be $19,480.86, the balance owed on post-petition ongoing payments to be $1,789.00, and the interest and late fees on post-petition ongoing payments to be $0.00.

It is ordered that the total sum of $21,269.86 shall be paid to Roundtree HOA by the Chapter 13 Trustee as full satisfaction of Roundtree HOA's lien on the property.

It is further ordered that upon receipt of payment from the Chapter 13 Trustee, Roundtree HOA shall immediately release any lien and all liens and encumbrances HOA has on the property located at 309 Roundtree Court, Sacramento, California, too allow the sale of the property to complete.

The court will enter an appropriate minute order.

32. 13-33466-B-13 MICHAEL JORDAN
BLG-5 Pauldeep Bains

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTOR'S ATTORNEY(S)
3-7-17 [56]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

Chad M. Johnson's First Motion for Compensation in the Amount of $2,425.00 and Reimbursement of Cost in the Amount of $79.81 for an Aggregate of $2,504.81 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor Chapter 13 plan, Debtor's former attorney Scott Sagaria received an initial retainer of $1,219.00. Mr. Sagaria had consented to the initial fee for legal services and expenses of $4,000.00. Dkt. 27. Thereafter, Bankruptcy Law Group substituted in as attorney of record on March 11, 2014. To date, the fees in the amount of $2,781.00 have been paid by the Chapter 13 Trustee to Bankruptcy Law Group through Debtor's Chapter 13 plan. Chad M. Johnson ("Applicant"), counsel with Bankruptcy Law Grup, now seeks additional compensation in the amount of $2,425.00 in fees and $79.81 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 59.

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

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would decide to sell and list his home. This required the Applicant to prepare and file a motion to avoid lien as to two liens on the property and prepare and file a motion to sell real property. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors. However, the court will disallow the request for 1.0 hour and deduct $185.00 requested for preparation of this motion for compensation as it is for the benefit of counsel and not the estate.

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

Additional Fees	$2,425.00
Less preparation motion for compensation	$ 185.00
Additional Costs and Expenses	$ 79.81
Total	**$2,319.81**

The court will enter an appropriate minute order.

33. 17-20566-B-13 GREGORY HETRICK
JPJ-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [30]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 14, 2017. The confirmation hearing for the amended plan is scheduled for May 2, 2017. The earlier plan filed January 28, 2017, is not confirmed.

The court will enter an appropriate minute order.

34. 17-20666-B-13 MARY CHAPEAU
JPJ-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [14]

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

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

It is unclear whether the Debtor can make payments under the plan pursuant to 11 U.S.C. § 1325(a)(6) or whether the plan is proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Debtor proposes plan payments of $2,060.00 for 60 months with a 100% dividend to unsecured creditors. The Debtor lists her net business income on Schedule I as $1,785.00 per month. However, the Profit and Loss statements dated July 2016 through December 2016 (dkt. 1, pp. 28-33) reflect a net income of $5,132.75. Additionally, the Statement of Financial Affairs, question #5, reflects a gross monthly income of $7,500.00 in 2016 and a gross monthly income of $2,770.00 in 2015. The Debtor has not provided evidence that her net monthly business income has decreased to $1,785.00 or that she is unable to complete the plan sooner than 60 months.

The plan filed January 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

35. 15-25582-B-13 ASHWANI/ASHWANI MAYER MOTION TO RECONSIDER
15-2188 RJR-3 2-17-17 [89]
FRESHKO PRODUCE SERVICES, INC.
V. MAYER

Thru #36 and #44

Tentative Ruling: Plaintiff Freshko Produce Service Inc.'s Notice of Motion and Motion for Reconsideration of the February 7, 2017, Final Ruling Denying Freshko Produce Services Inc.'s Motion for Summary Judgment has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion for reconsideration.

Plaintiff Freshko Produce Services, Inc., moves pursuant to Federal Rule of Civil Procedure ("Civil Rule") 60(b)(1) (applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9024) for reconsideration of the order denying Plaintiff's summary judgment motion.[1] The order denying Plaintiff's summary judgment motion on its single claim against Defendant Ashwani Mayer ("Defendant") under 11 U.S.C. § 523(a)(4) was entered on February 10, 2017. Plaintiff filed this motion for reconsideration on February 17, 2017. For the reasons explained below, Plaintiff's motion for reconsideration will be denied without prejudice.

Plaintiff maintains the court is mistaken in its determination that Plaintiff failed to demonstrate the absence of disputed factual issues regarding the third element of its § 523(a)(4) claim. *See* Dkts. 85, 87. More precisely, Plaintiff maintains the court erred in its analysis of the third element by relying on *Callaway Produce Co. v Bear Kodiak Produce, Inc. (In re Bear Kodiak Produce, Inc.)*, 283 B.R. 577 (Bankr. D. Ariz. 2002), to hold that there remains a factual question as to whether Defendant breached his fiduciary duty as a secondarily-liable trustee of a Perishable Agriculture Commodities Act ("PACA") trust by paying himself a salary with PACA trust assets consisting of funds from a co-mingled Wells Fargo bank account. Plaintiff maintains the court erred because in *Bear Kodiak* there was evidence that when PACA trust assets were used to pay salaries of secondarily-liable principals of the produce buyer the

---

[1] Filed within fourteen days after the order denying summary judgment was entered, Plaintiff's motion for reconsideration is more in the nature of a motion under Bankruptcy Rule 9023 (applicable by Civil Rule 59(e)). *See Dicker v. Dye (In re Edelman)*, 237 B.R. 146, 151 (9th Cir. BAP 1999). Relief under Civil Rule 59(e)/Bankruptcy Rule 9023 is an extraordinary remedy which is used sparingly. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). In fact, such a motion may only be granted on one of four grounds: (1) if necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if necessary to present newly discovered or previously unavailable evidence; (3) if necessary to prevent manifest injustice; or (4) if an amendment is justified by an intervening change in controlling law. *Id.* at 1111. Here, Plaintiff cites error of law as the basis of its Civil Rule 60(b)(1)/Bankruptcy Rule 9024 motion. *See* Mot. at 4:22-24. Therefore, although the wrong rule is cited Plaintiff has stated grounds within the scope of Civil Rule 59(e)/Bankruptcy Rule 9023. The court will consider Plaintiff's motion as such.

In addition, the court rejects Plaintiff's attempt to morph its § 523(a)(4) claim into a § 523(a)(2)(A) claim. *See* Mot. at 4:27-5:2. Plaintiff did not plead a § 523(a)(2)(A). Plaintiff plead only a single claim for relief under § 523(a)(4). The attempt to amend the complaint through a motion for reconsideration is inappropriate.

produce seller was timely paid and the produce buyer retained sufficient reserves to satisfy outstanding debts whereas, in this case, when the Defendant admittedly paid himself a salary out of PACA trust assets Plaintiff remained unpaid and neither Defendant nor the Defendant's entity had sufficient reserves to satisfy Plaintiff's PACA claim. The court does not find Plaintiff's distinction persuasive.

In addition to *Bear Kodiak*, the court also cited *William Consalo & Sons Farms, Inc. v. Drobnick Distributing, Inc.*, 2011 WL 1211911 (D. Ariz. 2011), in its decision denying Plaintiff's summary judgment motion. In *Consalo*, plaintiff sued defendants (an entity and its two principals) under PACA after the defendants failed to pay in excess of $1.5 million in invoices for produce they purchased from the plaintiff. *Id.* at *3. Defendants also lacked sufficient funds in reserve to pay plaintiff's PACA claim in full. *Id.* Nevertheless, two of the buyer's principals remained salaried employees and were paid $50,906.57 and $40,831.83 from the entity's general account. *Id.* at *4. Fully aware of these facts, the Arizona district court nevertheless quoted *Bear Kodiak's* conclusion that "'payments made in the ordinary course of a produce buyer's business, including *minimal salaries* and expenses do not constitute a breach of a PACA trust[,]'" *id.* at *8 (quoting *Bear Kodiak*, 283 B.R. at 587) (emphasis added), to support its own conclusion that the payment of a $40,000 salary from the buyer's general account to one its principals was "not sufficient to make [the principal] liable for the dissipation of assets under PACA." *Id.*

In short, Plaintiff has not demonstrated any error of law that warrants reconsideration and, thus, a different result than the result reached in the order denying Plaintiff's summary judgment motion entered on February 10, 2017. Whether the salary that the Defendant admittedly paid himself was minimal and in the ordinary course, regardless of whether Plaintiff's PACA claim was paid or unpaid and regardless of whether Defendant did or did not have sufficient reserves to pay Plaintiff's PACA claim, are factual issues that must be resolved at trial. Therefore, for the foregoing reasons, Plaintiff's motion for reconsideration is denied without prejudice.

The court will enter an appropriate minute order.

36. 15-25582-B-13 RJR-1 — ASHWANI MAYER AND POOJA VERMA, Peter G. Macaluso — MOTION TO MODIFY PLAN 2-13-17 [136]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to deny with prejudice the motion for an order directing debtors to modify the Chapter 13 plan.

Freshko Produce Services, Inc. moves the court for an order directing debtors Ashwani Mayer and Pooja Verma ("Debtors") to modify their current Chapter 13 plan confirmed on October 26, 2016, to account for its secured priority PACA claim.

Modification of a plan after confirmation is governed by 11 U.S.C. § 1329. In relevant part, § 1329(a) states as follows: "At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim[.]" 11 U.S.C. § 1329(a). Freshko is not the debtor. Freshko is not the trustee. And Freshko is no longer the holder of an allowed **unsecured** claim. Rather, as this court determined in Freshko's related adversary proceeding and at Freshko's request, "[Freshko's] claim . . . is . . . a priority **secured** PACA trust claim." Dkts. 85, 87. Freshko, therefore, is not one of the parties that may request a plan modification under § 1329(a).

Although it might be in the Debtors' best interest to modify their confirmed plan to account for Freshko's secured priority PACA trust claim because the next motion may be one to dismiss, the court cannot require the Debtors to do so under § 1329(a) at the request of a secured creditor. Therefore, Freshko's motion will be denied with prejudice.

The court will enter an appropriate minute order.

37. 16-24685-B-13 CHRISTOPHER/SHERRY LARSEN CONTINUED MOTION TO MODIFY PLAN
MRL-2 Mikalah R. Liviakis 2-8-17 [27]

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

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

This matter was continued from March 21, 2017, to allow Debtors additional time to file evidence by March 28, 2017, that Special Loan Servicing, LLC has consented to a loan modification. The modified plan changes the treatment of the home loan on Special Loan Servicing, LLC from Class 1 to Class 4. The motion states that the mortgage company has permitted a trial loan modification. No evidence or statement from the lender has been presented showing that it has consented to or is considering a loan modification. The Debtors have not sought court approval for any loan modification as required pursuant to Local Bankr. R. 3015-1(j).

The Debtors were also required to file amended Schedules I and J showing their current monthly income. The Debtors have failed to file amended Schedules I and J or other documentation showing that their monthly income is now $2,100.00. Schedules I and J filed on July 18, 2016, show a monthly net income of $3,999.00. With the addition of the mortgage payment in the amount of $1,358.01 according to Class 4 of the modified plan, the Debtors' monthly net income is $2,640.99. The plan does not comply with 11 U.S.C. §§ 1325(a)(3) or (a)(6).

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

The court will enter an appropriate minute order.

38.	16-23387-B-13 JPJ-1 **Thru #39**	REYNALDO GONZALEZ AND MARTHA RODRIGUEZ Thomas O. Gillis	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 10 2-7-17 [21]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $8,524.49. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 5, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's Proof of Claim was filed November 3, 2016.

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

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

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

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

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

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

39.	16-23387-B-13 JPJ-2	REYNALDO GONZALEZ AND MARTHA RODRIGUEZ Thomas O. Gillis	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 11 2-7-17 [25]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 11 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $11,649.92. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 5, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's Proof of Claim was filed November 3, 2016.

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

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

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

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

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

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

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

The court will enter an appropriate minute order.

40. 16-27793-B-13 CYNTHIA/SANDRA KERR MOTION TO CONFIRM PLAN
DAO-1 Dale A. Orthner 2-20-17 [43]

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The Motion to Confirm First Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 20, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will issue an appropriate minute order.

41. 17-20796-B-13 SENG CHANG
SMR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-6-17 [19]

HARJEET SAINI VS.
DISMISSED: 03/09/2017

Final Ruling: No appearance at the April 4, 2017, hearing is required.

The case was dismissed on March 9, 2017, due to Debtor's failure to timely file documents. The motion for relief from stay and from the non-filing co-debtor stay dismissed as moot.

The court will enter an appropriate minute order.

42. 16-26597-B-13 FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA
PGM-6 Peter G. Macaluso

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
3-13-17 [91]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Withdraw and Counsel Pursuant to Local Rule 2017-1(e) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Peter G. Macaluso ("Movant"), attorney for Debtors, moves to withdraw as attorney because the Debtors have expressed to Movant that they no longer wish to be represented by him. The Declaration of Peter G. Macaluso states that communication has broken down between the Debtors and Movant since negotiating the stipulation for the second deed of trust. Movant asserts that the Debtors are no longer willing to follow his legal advice going forward in the case and that this prevents Movant's ability to effectively serve as their attorney.

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 the Debtors have made it clear to him that they no longer wish to be represented by Movant, that communication has broken down between Movant and the Debtors, and that Debtors are unwilling to follow Movant's legal advice. This is cause for permitting the Movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) and 3-700(C)(3).

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

The court will enter an appropriate minute order.

43. 15-25402-B-13 THEA ELVIN CONTINUED MOTION TO SELL
MET-2 Mary Ellen Terranella 1-30-17 [39]

Tentative Ruling: Motion to Sell Property was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The matter was continued from March 28, 2017, in order for Wells Fargo Home Mortgage and Wells Fargo Bank, N.A. to review the terms of the sale as to the new buyer of the subject real property located at 35 Willotta Drive, Fairfield, California ("Property").

The court's decision is to determine the matter at the scheduled hearing.
At the time of the hearing the court will announce the proposed sale, determine if a short sale agreement is approved and, if so, request that all other persons interested in submitting overbids present them in open court.

The court will enter an appropriate minute order.

44.	15-25582-B-13 ASHWANI/ASHWANI MAYER 15-2188 FRESHKO PRODUCE SERVICES, INC. V. MAYER **See #35**	CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT 9-23-15 [1]

45. 17-20612-B-13 JPJ-1 — OLIBIA LATOYA LOPEZ, Nikki Farris — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-14-17 [15]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

The Chapter 13 Trustee objects to confirmation on gounds that the plan filed January 31, 2017, does not contain either the Debtor's original wet signature or electronic signature. The plan is also missing the Debtor's attorney's original wet signature or electronic signature. Without these signatures, the plan would not comply with Local Bankr. R. 900401(c)(1)(B).

The Debtor has filed a response stating that the Chapter 13 Trustee is correct and that the plan was filed without the signatures due to inadvertence. The Debtor has filed a copy of the plan with signatures as Exhibit 1. *See* dkt. 20.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed January 31, 2017, is confirmed.

The court will enter an appropriate minute order.