

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

**April 9, 2019 at 1:00 p.m.**

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1. [18-27902](#)-B-13 PAUL FISHER CONTINUED OBJECTION TO  
[JPJ](#)-1 Chad M. Johnson CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-14-19 [[27](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, 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.

There being no other objection to confirmation, the plan filed January 10, 2019, will be confirmed.

The objection and motion are ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

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

The court will enter a minute order.

**April 9, 2019 at 1:00 p.m.**

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2. [16-20707](#)-B-13 EDWIN GATO  
[PSB-2](#) Pauldeep Bains

MOTION FOR COMPENSATION FOR  
PAULDEEP BAINS, DEBTOR'S  
ATTORNEY  
3-5-19 [[82](#)]

### Final Ruling

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

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

### REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 33. Applicant now seeks additional compensation in the amount of \$1,980.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 84.

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).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would need to sell his home. Applicant states that it was necessary to prepare and file the motion to sell to allow the Debtor to sell his home and fund the plan at 100%. 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.

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

Additional Fees	\$1,980.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$1,980.00 and additional costs and expenses of \$0.00.

The court will enter a minute order.

### **Final Ruling**

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 12, 2018, due to failure to make plan payments (case no. 15-24484, dkt. 92). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor asserts that the prior case was filed to reorganize and address her debts. Specifically, Debtor's primary residence and a rental property were in arrears. During the prior bankruptcy, Debtor encountered unanticipated medical problems, suffered two slipped discs, needed spinal surgery, and was unable to work or drive. Because of her surgery and recovery period, Debtor was unable to make plan payments. Since then Debtor's circumstances have changed because she is fully recovered from her surgery, continues to work as a real estate agent, and has begun a new full-time job with the United States Postal Service as a mail carrier. With the new steady hours of work as a mail carrier, Debtor can rely on regular income and still generate income from her real estate business.

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

The court will enter a minute order.

4. [19-20809](#)-B-13 YEVGENIY/VERA MIKHALCHUK OBJECTION TO CONFIRMATION OF  
AP-1 Peter G. Macaluso PLAN BY JPMORGAN CHASE BANK,  
**Thru #5** N.A.  
3-21-19 [[17](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

5. [19-20809](#)-B-13 YEVGENIY/VERA MIKHALCHUK OBJECTION TO CONFIRMATION OF  
[JPJ-1](#) Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[14](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

6. [18-27712](#)-B-13 TOMMY/ALICE TAPLEY  
[PGM-2](#) Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF  
ALLIANCE ACCEPTANCE CORPORATION  
3-8-19 [[39](#)]

### **Final Ruling**

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

The court's decision is to value the secured claim of Alliance Acceptance Corporation at \$2,800.00.

Debtors' motion to value the secured claim of Alliance Acceptance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2003 Mercedes Benz S430 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$2,800.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7 filed by Alliance Acceptance Corp is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on April 6, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$6,747.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$2,800.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

### **Tentative Ruling**

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 7, 2018, due to failure to confirm a plan within 75 days of the court's order denying confirmation (case no. 18-21230, dkt. 38). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor seeks bankruptcy protection in order to protect her family home from possible foreclosure. Debtor asserts that she did not understand that the Trustee could automatically dismiss her case after the expiration of 75 days. Debtor's new plan provides for ongoing mortgage payments, an amount sufficient to repay pre-petition arrears, a secured loan for window replacement, tax liabilities to the Internal Revenue Service, and no less than 45% to allowed unsecured claims. The Debtor also surrendered a vehicle since her previous case was dismissed, making her new Chapter 13 plan payment less than her previous plan payment.

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

The court will enter a minute order.

8. [19-20715](#)-B-13 DANIEL/MICHELE MILLS  
[JPJ](#)-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[38](#)]

WITHDRAWN BY M.P.

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, 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.

There being no other objection to confirmation, the plan filed February 7, 2019, will be confirmed.

The objection and motion are ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

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

The court will enter a minute order.

### **Tentative Ruling**

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

The court's decision is to value the secured claim of Wells Fargo Dealer Services at \$20,418.00.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Jeep Cherokee ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$20,418.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **No Proof of Claim Filed**

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

### **Discussion**

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle for an auto loan between Debtor and Creditor. The lien has a balance of \$32,287.00 as of the date the petition was filed. 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 \$20,418.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.



10. [18-25617](#)-B-13 JOSE/JACQUELINE SEGURA MOTION TO MODIFY PLAN  
[TOG-2](#) Thomas O. Gillis 2-27-19 [[68](#)]

**Tentative Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny the motion to modify.

The Trustee filed an objection to the motion to modify due to a number of issues, including that the plan fails to properly account for all payments made by the Debtors to date, the plan payment does not equal the aggregate of monthly costs and trustee's fees, the plan exceeds the maximum length of 60 months, and the plan does not provide proper treatment to creditor Barbra Doss.

Debtors filed a response stating that they do not oppose the Trustee's opposition and state they will file an amended plan to address the Trustee's issues.

The plan filed February 27, 2019, is not confirmed.

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

The court will enter a minute order.

11. [18-23319](#)-B-13 SANTIAGO YBARRA AND  
[MS-2](#) CRISTY MUNOZ  
Mark Shmorgon

MOTION TO MODIFY PLAN  
3-4-19 [[52](#)]

### **Final Ruling**

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

12. [19-20621](#)-B-13 MERCEDES MOYA-GRANT  
[JPJ](#)-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[31](#)]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 Debtor has not submitted proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The issue regarding feasibility of the plan depending on the granting of a motion to value collateral for Santander Consumer USA is resolved. That motion was heard and granted on April 2, 2019. See dkt. 26.

Due to Debtor's failure to provide proof of her social security, the plan filed February 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. [19-20622](#)-B-13 MARCO CASTILLO OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[17](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

### **Tentative Ruling**

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) (3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on January 16, 2019, due to failure to make plan payments (case no. 16-20383, dkt. 174). Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c) (3) (C) (i) (III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (C).

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

The Debtors primary purpose for filing bankruptcy was and is to save their home since at the time of filing they were behind on mortgage payments and facing foreclosure. The Debtors were unable to make their plan payments in the prior case because Debtor Gianne Apurado lost his job in February 2018 and did not get a new job until May 2018. As a result and despite having already paid \$100,000 into their plan, Debtors fell behind on plan payments by 5 or 6 months. Debtors' attorney then filed a request to modify their plan in late fall 2018, which pushed their plan payments up to approximately \$4,000. This amount necessary to catch up on the plan payments was not feasible for the Debtors. The Debtors decided that it would be more financially prudent to let their case dismiss and refile a plan that they could afford. Debtors assert that their income has stabilized and that they do not expect any future issues.

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

The court will enter a minute order.

15. [19-20427](#)-B-13 ALAIN/DANIELLE GUSELLA OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Mikalah R. Liviakis PLAN BY JAN P. JOHNSON  
3-20-19 [[23](#)]

**Tentative Ruling**

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

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$3,500.00, which represents approximately 1 plan payment. An additional payment of \$3,500.00 will be due by the date of the hearing on this matter. 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 Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed January 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

16. [15-28729](#)-B-13 CHARLES EVANS  
[MET](#)-2 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR  
MARY ELLEN TERRANELLA, DEBTOR'S  
ATTORNEY  
3-23-19 [[65](#)]

**Final Ruling**

A motion seeking compensation that exceeds \$1,000.00 must provide at least 21 days' notice per Bankruptcy Rule 2002(a)(6). This motion seeks approval of \$1,200.00 in additional fees and \$70.84 in costs. The motion was filed on March 23, 2019, which provides only 17 days' notice.

The court's decision is to continue the hearing on the motion to April 23, 2019, at 1:00 p.m.

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

IT IS FURTHER ORDERED that counsel shall provide notice of the continued hearing date and time.

The court will enter a minute order.

17. [19-20630](#)-B-13 ISIDRO FLORES  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[15](#)]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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, 11 U.S.C. § 1308(a) requires a chapter 13 debtor to file all required tax returns for the four-year period prior to the filing of the petition and that returns must be filed no later than the date before the date on which the meeting of creditors is first scheduled to be held. The meeting of creditors was continued to April 4, 2019, at which time the Debtor must have filed the tax return and provided the Trustee with a copy.

Second, the Debtor has not provided the Trustee with a copy of his 2017 California income tax return. The Debtor has not complied with 11 U.S.C. § 521(a)(3).<sup>1</sup>

Third, the plan cannot be assessed for feasibility because Form 122C-1 is not complete and states all zeros for income despite Debtor being employed for 15 years and having income. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(1).

The plan filed February 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

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<sup>1</sup>There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney (In re Romeo)*, 2018 WL 1463850, \*5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's third objection, *infra*, is a sufficient basis on which confirmation may be denied.



18. [18-27731](#)-B-13 MEHRDAD/ZAHRA DEZYANIAN MOTION FOR RELIEF FROM  
[CAS-1](#) Mohammad M. Mokarram AUTOMATIC STAY  
3-1-19 [[16](#)]

FINANCIAL SERVICES VEHICLE  
TRUST VS.

### **Final Ruling**

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

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

Financial Services Vehicle Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 BMW xDrive35i Sport Utility 4D (the "Vehicle"). The moving party has provided the Declaration of Pamela Weems to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Weems Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$1,613.94 in post-petition payments past due. The Declaration also provides evidence that there are 0.722 pre-petition payments in default, with a pre-petition arrearage of \$806.97. The Vehicle is a leased vehicle.

### **Discussion**

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

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

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

The request for relief from any stay as to a co-debtor who is liable on such debt with the Debtor shall be granted pursuant to 11 U.S.C. § 1301(c).

**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.

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

19. [19-21032](#)-B-13 FRANCES REID  
[SMR-1](#) Mohammad M. Mokarram

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
3-12-19 [[15](#)]

MALWA HOLDINGS, LLC VS.

### **Final Ruling**

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

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

Malwa Holdings, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3739 Black Eagle Drive, Unit 13, Antelope, California (the "Property"). Movant has provided the Declaration of Gurbir Shidhu to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property and that Debtor Frances N. Reid and non-filing co-debtor daughter, Lesley A. Reid, entered into a lease agreement with Movant on June 15, 2018. The Debtor failed to make her January 2019 payment and a three day notice to pay rent or quit was served on the Debtor and non-filing daughter. The Debtor and non-filing daughter failed to pay rent or vacate the premises, and Movant commenced an unlawful detainer action on February 15, 2019. The Debtor filed for bankruptcy on February 21, 2019. Counsel for Movant was informed of the bankruptcy on March 5, 2019, and this initiated the stay on the unlawful detainer matter.

### **Discussion**

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on February 15, 2019, with a Notice to Quit served on January 30, 2019. Dkt. 18, exhs. B, C.

Movant has provided a copy of the lease agreement to substantiate its claim of ownership. Dkt. 18, exh. A. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The request for relief from any stay as to non-filing daughter Lesley A. Reid, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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

The court will enter a minute order.

20. [17-23439](#)-B-13 WENDY ROBINETTE  
[MET](#)-2 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR  
MARY ELLEN TERRANELLA, DEBTOR'S  
ATTORNEY  
3-24-19 [[49](#)]

**Final Ruling**

A motion seeking compensation that exceeds \$1,000.00 must provide at least 21 days' notice per Bankruptcy Rule 2002(a)(6). This motion seeks approval of \$3,010.00 in additional fees and \$59.15 in costs. The motion was filed on March 24, 2019, which provides only 16 days' notice.

The court's decision is to continue the hearing on the motion to April 23, 2019, at 1:00 p.m.

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

IT IS FURTHER ORDERED that counsel shall provide notice of the continued hearing date and time.

The court will enter a minute order.

21. [19-20640](#)-B-13 LISA ROBERTS  
[CJO](#)-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY J.G. WENTWORTH HOME  
LENDING, LLC  
3-21-19 [[18](#)]

### **Tentative Ruling**

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

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

Objecting creditor J.G. Wentworth Home Lending, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$1,425.32 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 February 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

22. [19-20443](#)-B-13 BARRY/MARIE CLEVERDON  
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
3-20-19 [[21](#)]

### **Tentative Ruling**

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

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,062.00, which represents approximately 1 plan payment. 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 Debtors have failed to amend Schedule I to indicate that Debtor will no longer be running his own business due to a severe car accident. The Debtors have not complied with 11 U.S.C. § 1325(a)(1), (a)(3) and § 521(a)(3).

Third, the plan cannot be fully assessed for feasibility or effectively administered because the plan, schedules, statement of financial affairs, and Forms 122C-1 and 122C-2 filed on February 7, 2019, do not contain Debtor's wet signature nor electronic signature.

The plan filed February 7, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

23. [19-20643](#)-B-13 NED/EDNA SMITH  
[JPJ](#)-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[34](#)]

**Tentative Ruling**

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

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

Feasibility depends on the granting of a motion to value collateral for Peritus Portfolio Services. That motion was heard and granted on April 2, 2019. See dkt. 29.

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 2, 2019, is confirmed.

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

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

The court will enter a minute order.



24. [19-20845](#)-B-13 RAYMOND CORREA  
[JPJ](#)-1 Taras Kurta

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[27](#)]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 plan cannot be assessed for feasibility. The Debtor has failed to file an amended voluntary petition to list previous case that were filed by the Debtor. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, feasibility depends on the granting of a motion to value collateral for Santander Consumer USA. That motion was heard and denied without prejudice on April 2, 2019.

The plan filed February 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

25. [19-20747](#)-B-13 DANIEL/TERESA STALTER                   OBJECTION TO CONFIRMATION OF  
                  Catherine King   PLAN BY LASSEN COUNTY FEDERAL  
  CREDIT UNION  
**Thru #26**   3-21-19 [[34](#)]

CONTINUED TO 5/07/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF LASSEN COUNTRY FEDERAL CREDIT UNION.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

26. [19-20747](#)-B-13 DANIEL/TERESA STALTER                   OBJECTION TO CONFIRMATION OF  
[JPJ-1](#)   Catherine King   PLAN BY JAN P. JOHNSON AND/OR  
  MOTION TO DISMISS CASE  
  3-20-19 [[28](#)]

CONTINUED TO 5/07/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF LASSEN COUNTRY FEDERAL CREDIT UNION.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

### **Tentative Ruling**

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's fourth bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on April 26, 2018, due to failure to file financial management course certificate (case no. 18-20502, dkts. 32-34). The Debtor's second bankruptcy case was dismissed on October 10, 2018, after Debtor failed to pay a filing fee installment (case no. 18-24425, dkt. 32). The Debtor's third bankruptcy case was dismissed on February 25, 2019, after Debtor failed to cure her delinquency in plan payments (case no. 18-26945, dkts. 51-52).

### **Discussion**

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

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

The Debtor states that the prior and present cases were filed in order to save her vehicles from repossession since they are used by her and her daughter as transportation to work. However, Debtor does not sufficiently explain why the prior cases were dismissed to rebut the presumption that the present case was filed in bad faith.

Debtor's first case was dismissed due to failure to file a financial management course certificate, but Debtor's declaration does not explain why the certificate was not filed. The declaration merely states that Debtor "was between jobs and a single mother who had to pay for two cars." Thus, the Debtor does not provide a substantial excuse for why the case was dismissed.

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<sup>2</sup>The repeat filing of non-productive chapter 13 cases, particularly with regard to the timing and number in this case, is itself bad faith conduct, abusive filing, and filing for an improper purpose, all of which is bad faith sufficient to warrant the denial of the motion independent of the statutory presumption the Debtor has not rebutted for the reasons explained below.

Debtor's second case was dismissed due to failure to pay a filing fee installment. Debtor's declaration does state that she did not have sufficient income because she was studying for her agent license.

Debtor's third case was dismissed due to failure to cure her delinquency in plan payments. However, Debtor does not explain why she was unable to cure the delinquency.

The Debtor has not offered sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D). The motion is denied.

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

The court will enter a minute order.

28. [18-27348](#)-B-13 APRIL TURNBULL  
[PGM](#)-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
3-5-19 [[45](#)]

**No Ruling**

**Tentative Ruling**

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

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

First, the Debtor failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) since the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedule A/B, the Debtor's opinion of value of residential property located in Sacramento County is \$265,000.00. According to the Trustee's preliminary investigation, the value of the property could be worth approximately \$349,000.00.

Fourth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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

Sixth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

The plan filed February 4, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

30. [10-32656](#)-B-13 MICHAEL/CHERYL CARTER  
[17-2219](#) ECH-2  
CARTER, JR. ET AL V. OCWEN  
LOAN SERVICING, LLC ET AL

MOTION FOR JUDGMENT ON THE  
PLEADINGS  
3-12-19 [[91](#)]

**Add on #45**

**No Ruling**

31. [19-20665](#)-B-13 SHARON OPINALDO  
[JPJ](#)-1 Eric W. Vandermeij

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
3-20-19 [[15](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 24, 2019. The confirmation hearing for the amended plan is scheduled for May 14, 2019. The earlier plan filed February 4, 2019, is not confirmed.

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

The court will enter a minute order.



32. [18-27966](#)-B-13 YVONNE RICHARDS  
[APN-1](#) Aubrey L. Jacobsen

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
3-7-19 [[44](#)]

KIA MOTORS FINANCE VS.

### **Final Ruling**

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

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

Kia Motors Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Kia Optima (the "Vehicle"). The moving party has provided the Declaration of Gloria Greer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Greer Declaration provides testimony that Debtor is past due for the October 2018 through and including the February 2019 monthly payments at the rate of \$457.60 per month, for a total delinquency of \$2,333.76, and will become due for the sum of \$457.60 on March 14, 2019.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$18,098.68, as stated in the Greer Declaration, while the value of the Vehicle is determined to be \$11,527.00, as stated in Schedules A/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 Debtor 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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

The request for relief from stay as to non-filing co-debtor Justin K. Richards, who is

liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

### **Final Ruling**

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

The court's decision is to value the secured claim of Santander Consumer USA at \$3,775.00.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Nissan Altima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,775.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Santander Consumer USA is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on May 18, 2012, according to Claim No. 1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,315.10. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,775.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

34. [18-24576](#)-B-13 ALAIN KOZIK AND JON BECK MOTION TO SELL  
[PSE](#)-3 Pauldeep Bains 3-15-19 [[47](#)]

WITHDRAWN BY M.P.

**Final Ruling**

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

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

35. [19-20578](#)-B-13 AARON MCCONVILLE  
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-20-19 [[19](#)]

**Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 22, 2019. No confirmation hearing has yet been scheduled. Nonetheless, the earlier plan filed January 31, 2019, is not confirmed.

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

The court will enter a minute order.

36. [19-20680](#)-B-13 JESSICA KELLER  
[JPJ](#)-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
3-20-19 [[26](#)]

### **Tentative Ruling**

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

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

First, the Debtor has not provided the Trustee with a copy of her 2017 California income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(a)(3).<sup>1</sup>

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is \$85,660.00. The total amount that will be paid to unsecured creditors is \$1,622.00.

The issue regarding filing an amended petition to reflect previous cases filed by the Debtor has been resolved. An amended petition was filed on March 15, 2019.

The plan filed February 5, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

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<sup>1</sup>There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney (In re Romeo)*, 2018 WL 1463850, \*5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's second objection, *infra*, is a sufficient basis on which confirmation may be denied.

37. [19-20882](#)-B-13 HENRY RODRIGUEZ OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR  
**Thru #38** MOTION TO DISMISS CASE  
3-20-19 [[24](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

38. [19-20882](#)-B-13 HENRY RODRIGUEZ OBJECTION TO CONFIRMATION OF  
[RTD](#)-1 Peter G. Macaluso PLAN BY SCHOOLS FINANCIAL  
CREDIT UNION  
3-21-19 [[28](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

39. [19-20683](#)-B-13 SHARON BOLLING OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON  
3-20-19 [[23](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE  
COLLATERAL OF REAL TIME RESOLUTIONS.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.



40. [19-20185](#)-B-13 PATRICK/PAULA FIELDS OBJECTION TO CONFIRMATION OF  
[AAS-1](#) Bruce Charles Dwigins PLAN BY BANK OF EASTERN OREGON  
**Thru #42** 3-21-19 [[32](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/11/19.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

41. [19-20185](#)-B-13 PATRICK/PAULA FIELDS AMENDED OBJECTION TO  
[DB-1](#) Bruce Charles Dwigins CONFIRMATION OF PLAN BY  
WASHINGTON FEDERAL  
3-21-19 [[29](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/11/19.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

42. [19-20185](#)-B-13 PATRICK/PAULA FIELDS OBJECTION TO CONFIRMATION OF  
[JPJ-1](#) Bruce Charles Dwigins PLAN BY JAN P. JOHNSON  
3-19-19 [[21](#)]

CONTINUED TO 4/23/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/11/19.

**Final Ruling**

No appearance at the hearing is required. The court will enter a minute order.

### **Tentative Ruling**

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 21, 2019, due to failure to make plan payments (case no. 17-27687, dkt. 60). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor seeks bankruptcy protection to save his home from foreclosure. Debtor states he fell behind on plan payments in the previous case because he was told an incorrect start date for his plan payments, his car transmission needed replacement, the main water line in the house needed repairs, his wife took time off work to give birth to their child, and the cost of observing cultural and religious tradition with the birth of their child. Since then, Debtor has retained new counsel who has informed him of the start date of his plan payments, the car transmission and water line issues are resolved, and the Debtor's wife has returned to work.

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

The court will enter a minute order.

44. [19-21299](#)-B-13 EDWIN CARDE AND MAGDALENA MOTION FOR RELIEF FROM  
[FLG-1](#) SANCHEZ AUTOMATIC STAY  
Mohammad M. Mokarram 3-11-19 [[9](#)]  
REALTY ADVISORS, INC. VS.

### **Tentative Ruling**

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

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

Before the court is a motion for relief from the automatic stay filed by Realty Advisors, Inc. ("Landlord"). Landlord is the owner and landlord of a commercial premises leased by Debtor Edwin Carde ("Debtor"). The commercial lease was entered into on June 1, 2016. Debtor is past due 14 pre-petition payments totaling \$201,297.00 and 1 post-petition payment totaling \$13,910.00.

Debtor opposes the motion. Debtor filed a response stating that he owns Sacwork, a leasing company that rents out office space. Debtor asserts that Sacwork has various tenants on the commercial property now and that he is able and willing to pay the postpetition rents. Debtor states in his declaration that he will make a \$6,955.00 payment in March 2019 and a \$13,910.00 payment in April 2019.

In reply to the Debtor's opposition, Landlord asserts that the Debtor remains past due on payments for postpetition lease obligations. It also asserts that Debtor's proposed payment is insufficient to cover lease obligations. Landlord therefore requests termination of the automatic stay or the establishment of a deadline for assumption or rejection of the lease and adequate protection in the form of regular payments of all lease obligations from the petition date until assumption or rejection of the lease.

### **Discussion**

The postpetition default in the payment of rental obligations required by the lease, and an inability to provide Landlord with adequate protection going forward, are sufficient cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The Debtor proposes to pay less than the required monthly lease obligation for March 2019 and what appears to be the required monthly obligation (or close to it) for April 2019. However, by the Debtors' own admission, rent anticipated to be collected from tenants in the amount of \$15,660.00 in May 2019 is less than the Debtors' monthly lease obligations of \$16,903.96 beginning May 1, 2019. The Debtors' ability to collect \$15,660.00 also assumes that all tenants pay and they pay timely.

In any case, it is apparent that the Debtors have insufficient income to satisfy leasehold obligations, plan obligations, and on ongoing personal and business expenses. In other words, the Debtors are unable to provide Landlord with adequate protection after April 2019.<sup>1</sup> Cause therefore exists, the motion is granted, and the automatic stay is terminated.

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

The court will enter a minute order.

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<sup>1</sup>The court also notes that the Debtors' proposed plan filed March 12, 2019, dkt. 16, and set for confirmation on May 14, 2019, dkt. 27 at ¶ 9, makes no provision for the assumption of the lease. By that silence it would appear the Debtors contemplate lease rejection. See Plan, § 4.02.

45. [10-32656](#)-B-13 MICHAEL/CHERYL CARTER  
[17-2219](#) WW-6  
CARTER, JR. ET AL V. OCWEN  
LOAN SERVICING, LLC ET AL

MOTION TO COMPEL O.S.T.  
3-22-19 [[95](#)]

**Add on #30**

**No Ruling**

46. [18-27527](#)-B-13 FRANCINE MITCHELL  
[MET](#)-2 Mary Ellen Terranella

CONTINUED MOTION TO CONFIRM  
PLAN  
2-25-19 [[28](#)]

**No Ruling**

### **Final Ruling**

This matter was continued from April 2, 2019. The motion was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Debtors' motion to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2017 Toyota Corolla ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$17,521.41 as of the petition filing date. This value represents the amount owed (\$22,891.83) minus the percentage of the purchase price attributable to theft deterrent, extended warranty, and gap insurance ( $0.2346 \times \$22,891.83$ ). Debtors argue that theft deterrent, extended warranty, and gap insurance provided at the time the agreement was entered do not constitute a purchase money security interest ("PMSI") and therefore is not included in the secured value. The Debtors cite to *In re Pendrod*, 611 F.3d at 1162 (9th Cir. 2008), to support their rationale.

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Ally Bank is the claim which may be the subject of the present motion.

### **Discussion**

Debtors misunderstand *In Re Penrod*. That case involved a loan for a new vehicle that incorporated the remainder of the debt secured by debtor's trade-in vehicle. *Americredit Financial Services, Inc. v. Marlene A. Penrod (In re Penrod)*, 611 F.3d 1158, 1159 (9th Cir. 2010). The debtor filed bankruptcy approximately 523 days after purchasing the new vehicle and sought to value the secured claim. *Id.* Americredit Financial Services opposed the valuation, arguing that this was a purchase money security interest incurred less than 910 days before filing and could not be valued according to the hanging paragraph of 11 U.S.C. § 1325(a). The court held that the financing for the remainder of what the debtor owed on his trade-in vehicle was an antecedent debt, and not an expense incurred in buying the new vehicle (i.e. a purchase money security interest). *Id.* at 1162.

Here, Debtors seek to deduct from the fair market value of the Vehicle the value of the theft deterrent, extended warranty, and gap insurance provided at the time the agreement was entered. Debtors have not provided authority establishing theft deterrent, extended warranty, and gap insurance as antecedent debts. Indeed, the aforementioned services have zero value but for their connection to the purchase of the Vehicle.

The Debtors do not contest that Creditor has a claim secured by a lien on property of the estate. Pursuant to 11 U.S.C. § 506, Creditor's claim is secured to the extent of the value of the Creditor's interest in the estate's interest in the property.

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

The court will enter a minute order.