UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 17, 2018 at 1:00 p.m.

1.	15-26501-B-13 SDH-4	HILLARY CRINER Scott D. Hughes	MOTION TO MODIFY PLAN 2-28-18 [75]

Tentative Ruling: The Motion to Confirm Second 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)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The modified plan filed February 28, 2018, does not properly account for all payments the Debtor has paid to the Trustee to date. The Trustee does not oppose confirming the modified plan provided that the order properly account for all payments made by the Debtor to date by stating the following: The Debtor has paid a total of $96,905.00 to the Trustee through February 2018. Commencing March 25, 2018, monthly payments shall be $915.00 for the remainder of the plan.

Provided that the order confirming properly account for all payments made by the Debtor to date, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

2. 16-24908-B-13 SHERWIN/LORINA PANEM
EAT-1 Seth L. Hanson

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-18 [30]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the April 17, 2018, hearing is required.

U.S. Bank, N.A. having filed a Notice of Withdrawal of Motion for Relief from the Automatic Stay, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

3. 18-20909-B-13 YVONNE WRIGHT
JPJ-1 Richard Kwun

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-18 [13]

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 April 2, 2018. The confirmation hearing for the amended plan is scheduled for May 15, 2018. The earlier plan filed February 17, 2018, is not confirmed.

The court will enter an appropriate minute order.

4.	18-20012-B-13 JPJ-1	FLORA NANCA Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-8-18 [35]

Final Ruling: No appearance at the April 17, 2018, 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. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed January 2, 2018, will be confirmed.

The court will enter an appropriate minute order.

5. 17-26814-B-13 VERA UTLEY — MOTION TO MODIFY PLAN
MRL-1 Mikalah R. Liviakis — 2-14-18 [19]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 14, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

6. 17-27414-B-13 PATRICIA GONSALVES — MOTION TO CONFIRM PLAN
MRL-2 Mikalah R. Liviakis — 2-5-18 [31]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

The Motion to Confirm Debtor's Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the 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 5, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

7. 17-28314-B-13 DEAN/THERESA HESS — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
JPJ-2 Stephen M. Reynolds — 3-19-18 [23]

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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to 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, or in the alternative dismissed, based on Debtors' failure to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation was heard and sustained on February 13, 2018. To date, the Debtors failed to take further action to confirm a plan in this case.

According to amended Schedules A/B and C filed January 19, 2018, the total value of the non-exempt equity in the estate is $9,946.88. Thus, conversion to a Chapter 7 proceeding rather than dismissing the case is in the bet interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Debtors have filed a non-opposition to the Trustee's motion.

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 exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtors have failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors and because non-exempt equity exists in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

8. 17-27015-B-13 GERARDO LOPEZ — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 3-6-18 [82]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

The Motion to Confirm Debtor's First Amended Plan Filed on March 6, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first 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 March 6, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

9. 15-29325-B-13 MENEN/MARIA ZARATE — MOTION TO MODIFY PLAN
MRL-2 Mikalah R. Liviakis — 2-19-18 [36]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 19, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10.	16-22950-B-13 PGM-4	JOYCELYN/FRANCISCUS VAN HOOF Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 3-31-18 [74]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

A motion for compensation exceeding $1,000.00 must provide at least 21-days' notice per Bankruptcy Rule 2002(a)(6). Applicant Peter G. Macaluso seeks $1,050.00 in additional fees but has only provided 17-days' notice. The motion for additional compensation is denied without prejudice.

The court will enter an appropriate minute order.

11. 18-20051-B-13 JPJ-1 — RORY MCNEIL, Mark W. Briden — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 2-13-18 [19]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). 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 continue the matter to May 15, 2018, at 1:00 p.m.

This matter was continued from March 6, 2018, so that the matter could be heard after the continued meeting of creditors scheduled on April 12, 2018, at which time the Debtor must have filed her 2015 and 2016 tax returns and provided the Trustee with copies. That meeting of creditors was subsequently continued to May 10, 2018. The objection to confirmation will be continued to May 15, 2018, at 1:00 p.m.

The court will enter an appropriate minute order.

12. 16-26552-B-13 WALTER GRAMPS MOTION TO MODIFY PLAN
MOH-2 Michael O'Dowd Hays 3-1-18 [36]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 1, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. 16-24858-B-13 ENRICO/CIELITA MANUEL MOTION TO MODIFY PLAN
MET-1 Mary Ellen Terranella 3-12-18 [18]

Tentative Ruling: The Motion to Confirm Second 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)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The modified plan filed March 12, 2018, does not properly account for all payments the Debtors have paid to the Trustee to date. The Trustee does not oppose confirming the modified plan provided that the order properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $8,655.00 to the Trustee through February 2018. Commencing March 25, 2018, monthly payments shall be $375.00 for the remainder of the plan.

Debtors have filed as an exhibit a proposed order with the Trustee's requested language and the correct amount of payments made by the Debtors to the Trustee through February 2018.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

14. 18-20764-B-13 HAZEL CARSON
AP-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
3-29-18 [16]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan 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.

Subsequent to the filing of U.S. Bank, N.A.'s objection, the Debtor filed an amended plan on April 5, 2018. The confirmation hearing for the amended plan is scheduled for May 22, 2018. The earlier plan filed February 12, 2018, is not confirmed.

The court will enter an appropriate minute order.

15. 16-26567-B-13 DANIEL/PATRICIA FUSCO — OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
ALF-2 Ashley R. Amerio — 2-15-18 [48]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

The Objection to Claim #6 - Notice of Post-Petition Mortgage Fees, Expenses, and Charges, of Ditech Financial, LLC. on Behalf of Bank of America, N.A. 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. 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 sustain the objection and disallow the fees in their entirety.

Ditech Financial, LLC. on Behalf of Bank of America, N.A. ("Creditor") is the holder of the second deed of trust on the Debtor's residence and is provided for in the plan filed September 25, 2017, and confirmed on November 20, 2017, in Class 4 with the Debtor making monthly contract installments directly to the Creditor. Creditor seeks $900.00 in post-petition charges, which is composed of $650.00 for the filing of the proof of claim and $250.00 for a bankruptcy fee.

The court finds that the Creditor has failed to explain the time spent by its counsel to review the bankruptcy case and file the proof of claim, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Chapter 13 Trustee's objection is sustained and the fees are disallowed.

Based on the evidence before the court, the objection is sustained and the fees are disallowed in their entirety.

The court will enter an appropriate minute order.

16. 18-21767-B-13 EUBECITA BELL
SNM-1 Stephen N. Murphy

MOTION TO EXTEND AUTOMATIC STAY
3-28-18 [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 February 28, 2018, due to delinquency in plan payments, failure to appear at the first meeting of creditors (although Debtor did appear at a continued meeting of creditors), and failure to notice all interested parties of the Chapter 13 plan and to set a confirmation hearing date (case no. 17-27665, dkts. 38, 40). 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 an effort to save her home. The Declaration of Eubecita Bell states that in the previous case Debtor's financial circumstances had suffered because she had hired a lawyer who charged her $14,000.00 in a loan modification scam. The Debtor states that she was misled to believing that her lawyer was licensed. Debtor's circumstances have changed because she has hired a new lawyer, Stephen N. Murphy, who has not asked Debtor for any money prior to the filing of this second Chapter 13 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 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.

17. 17-26573-B-13 JPJ-2 — FRANCESCA PENROSE, David P. Ritzinger — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE, 3-19-18 [59]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

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 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. 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 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 converted, or in the alternative dismissed, based on the following grounds.

First, the Debtor is delinquent to the Trustee in the amount of $16,350.00, which represents approximately 2.22 plan payments. By the time this matter is heard, an additional plan payment in the amount of $7,782.00 will also be due. The last payment posted to this case was on January 5, 2018. Cause exists to convert or dismiss this case to a Chapter 7 pursuant to 11 U.S.C. § 1307(c)(1).

Second, according to Schedules A/B and C filed October 3, 2017, the total value of non-exempt equity in the estate is $11,466.65. Due to the non-exempt equity listed, conversion to a Chapter 7 proceeding rather than dismissing the case is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

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 exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor is delinquent in plan payments and there exists non-exempt equity in the estate for the benefit of creditors. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

18. 17-25090-B-13 MARTHA RAMIREZ
PGM-2 Peter G. Macaluso

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
3-2-18 [55]

Final Ruling: No appearance at the April 17, 2018, hearing is required.

The Debtor having filed a Notice of Withdrawal of the Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges Filed by Citibank, N.A., Not In Its Individual Capacity, but Solely as Trustee of NRZ Pass-Through Trust VI on January 8, 2018, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

19. 17-25092-B-13 RHIANNON NICHOLS
18-2006 BMM-1
NICHOLS V. LVNV FUNDING, LLC ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
3-13-18 [11]

Thru #20 and Add On #25

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

The court's decision is to order proof of claim no. 11 withdrawn and grant the motion to dismiss this adversary proceeding.

Introduction and Background

This adversary proceeding concerns a proof of claim, claim no. 11, that Defendant LVNV Funding, LLC, through its servicer Defendant Resurgent Capital Services, LP, filed on October 27, 2017. Plaintiff-Debtor Rhiannon Nichols filed the complaint that initiated this adversary proceeding on January 26, 2018. Dkt. 1. The complaint purports to allege two claims for relief: (1) an objection to claim no. 11 as being time-barred under the applicable statute of limitations in the first claim for relief; and (2) failure to sign claim no. 11 using a "wet ink" signature in violation of the local bankruptcy rules in the second claim for relief.

Defendants moved to dismiss the complaint on March 13, 2018. Dkt. 11. Defendants' motion to dismiss includes a request for permission to voluntarily withdraw proof of claim no. 11 or, alternatively, for the court to disallow that proof of claim in resolution of the first claim for relief due to Plaintiff's affirmative defense of statute of limitations. Defendants also move for dismissal of the local rule signature violation claim alleged in the second claim for relief.

Plaintiff is amenable to Defendants' voluntary withdrawal of proof of claim no. 11. In fact, the complaint states: "WHEREFORE, Plaintiff prays that the Court: . . . [o]rder injunctive relief requiring Defendants to withdraw their POC in this case." Dkt. 1 at 5:17. Plaintiff also requests a ruling on the second claim for relief even if the first claim for relief is resolved by withdrawal or disallowance of claim no. 11. *See* dkt. 18, pp. 2-3.

For the reasons explained below, Defendants' request for permission to voluntarily withdraw its proof of claim, claim no. 11, and Defendants' motion to dismiss this adversary proceeding will granted. Proof of claim no. 11 will ordered withdrawn and this adversary proceeding will be ordered dismissed.

Discussion

Inasmuch as Plaintiff objects to Defendants' proof of claim in a claim for relief included in an adversary complaint, the court construes Defendants' request to withdraw its proof of claim in the motion to dismiss as a request made under Federal Rule of Bankruptcy Procedure 3006. *See U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) (stating that moving party's label is not controlling and court may construe matter, however styled, to be the type proper for relief requested); *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015) (stating that court must construe matters so as to provide just, speedy, and inexpensive determination of every case and proceeding and may re-designate as necessary). Bankruptcy Rule 3006 states as follows:

> A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this

> rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to §1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

Fed. R. Bankr. P. 3006.

Defendants' request to withdraw proof of claim no. 11 following service of the complaint that includes Plaintiff's demand for injunctive relief ordering Defendants to withdraw their proof of claim puts the parties in the same posture as if they had stipulated to a voluntary withdrawal of the proof of claim. And while that nevertheless requires court approval, *see In re 20/20 Sport, Inc.*, 200 B.R. 972, 977 (Bankr. S.D.N.Y. 1996), the court will grant the parties the relief that their papers contemplate.[1] Accordingly, proof of claim no. 11 is deemed withdrawn.

With proof of claim no. 11 now withdrawn, it is as if that proof of claim was never filed in the first instance. That is because Bankruptcy Rule 3006 operates in the same manner as Federal Rule of Civil Procedure ("Civil Rule") 41(a) (applicable by Bankruptcy Rule 7041). *In re Owens*, 455 B.R. 640, 644-645 (Bankr. W.D. Mich. 2011) (citations omitted). Under Civil Rule 41(a), "the effect of a voluntary dismissal is that the original complaint is treated as though it was never filed." *Fields v. Gates*, 243 F.3d 547, *1 (9th Cir. 2000) (Table) (citing *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995)).

Treating Defendants' now withdrawn proof of claim as if it was never filed means that, *in this case*, there is not (and there cannot be) any local rule signature violation by the Defendants. And in the absence of a local rule signature violation by the Defendants *in this case* there is not (and there cannot be) any live controversy for purposes of the claim alleged in the second claim for relief. In the absence of a live controversy, the court will not issue an advisory opinion on the use of "wet ink" and electronic signatures under the local bankruptcy rules. *See In re Ulberg*, 2011 WL 6016131, *10 (Bankr. E.D. Cal. 2011) (recognizing that the court cannot act when there is no live controversy). Moreover, Plaintiff lacks standing to prosecute any local rule signature violation(s) by the Defendants, if any, in any other case(s) filed in this district as she purportedly seeks to do through the second claim for relief. *See* dkt. 1 at 5:15, 18-19 ("WHEREFORE, Plaintiff prays that the Court . . . [r]equire Defendant to produce all time-barred Proofs of Claim filed in any case in this judicial district in the last five years[.]"); *Id.* at 5:20-21 ("WHEREFORE, Plaintiff prays the Court . . . Require Defendant to produce all Proofs of Claim filed in any case in this judicial district in the last five years which do not bear an original "wet" signature[.]").

In short, withdrawal of proof of claim no. 11 in resolution of the first claim for relief effectively negates the local bankruptcy rule signature violation claim alleged in the second claim for relief.

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[1] Notice of Defendants' motion to dismiss, and thereby its request to withdraw its proof of claim, was served on the Chapter 13 Trustee. *See* dkt. 17.

Conclusion

For all the foregoing reasons, neither the first nor the second claims for relief alleged in the complaint state any plausible claim(s) against the Defendants. Therefore, Defendants' motion to dismiss is granted and this adversary proceeding is ordered dismissed.

The court will enter an appropriate minute order withdrawing claim no. 11, granting Defendants' motion, and dismissing this adversary proceeding.

20. 17-25092-B-13 RHIANNON NICHOLS — MOTION FOR SUMMARY JUDGMENT
18-2006 TAG-1 — 3-19-18 [13]
NICHOLS V. LVNV FUNDING, LLC
ET AL

Tentative Ruling: The 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)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion for summary judgment as moot based on the decision at Item #19.

The court will enter an appropriate minute order.

21. 10-44595-B-13 SLE-1 **Thru #23**
MICHAEL LABAR
Steele Lanphier
MOTION TO AVOID LIEN OF OPERATING ENGINEERS LOCAL #3 FEDERAL CREDIT UNION
4-2-18 [53]

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of Operating Engineers Local #3 Federal Credit Union ("Creditor") against the Debtor's property commonly known as 125 I Street, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $27,364.41. An abstract of judgment was recorded with Placer County on September 22, 2009, which encumbers the Property. The first and second mortgages recorded against the Property total $279,300.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $134,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

22. 10-44595-B-13 SLE-2
MICHAEL LABAR
Steele Lanphier
MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
4-2-18 [48]

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of Unifund CCR Partners, A New York Partnership aka Unifund, Inc. ("Creditor") against the Debtor's property commonly known as 125 I Street, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $33,558.15.

An abstract of judgment was recorded with Placer County on June 23, 2010, which encumbers the Property. The first and second mortgages recorded against the Property total $279,300.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $134,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

23.	10-44595-B-13 SLE-3	MICHAEL LABAR Steele Lanphier	MOTION TO AVOID LIEN OF LHR, INC. 4-2-18 [43]

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of LHR, Inc. ("Creditor") against the Debtor's property commonly known as 125 I Street, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,005.16. An abstract of judgment was recorded with Placer County on October 30, 2009, which encumbers the Property. The first and second mortgages recorded against the Property total $279,300.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $134,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

24. 18-21698-B-13 MET-1 — MICHAEL/KRISTINE DOUVIA — Mary Ellen Terranella — MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL — 3-29-18 [11]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of OneMain Financial 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 OneMain Financial at $8,450.00.

Debtors' motion to value the secured claim of OneMain Financial ("Creditor") is accompanied by Debtors' declaration. Debtor are the owner of a 2010 Toyota RAV4("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $8,450.00 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. 1-1 filed by OneMain Financial Services, Inc. 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 $12,001.00. 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 $8,450.00. *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.

25. 17-25092-B-13 RHIANNON NICHOLS
18-2006
NICHOLS V. LVNV FUNDING, LLC
ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-26-18 [1]

See Also #19-20