UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 20, 2015 at 10:00 a.m.

1.	15-21303-B-13 DBJ-2	ROBERT MACKENZIE AND SADHANA JONES Douglas B. Jacobs	MOTION TO APPROVE LOAN MODIFICATION 5-1-15 [30]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Debtor's [sic] Motion for Courts [sic] Approval of Trial Period Payment for Permanent Loan Modification 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 permit the loan modification requested.

The motion filed by Robert Mackenzie and Sadhana Jones ("Debtors") seeks court approval to incur post-petition credit. Nationstar Mortgage ("Creditor"), whose claim the amended plan (which is set for hearing on a motion to confirm on June 3, 2015) provides for in Class 4, has agreed to a permanent loan modification after Debtors have made three trial period payments. The Debtors' trial period payments will be $2,031.58 each month for the months of April, May, and June 2015 (Dkt. 33, Exh. A). In the event that the modification is not approved, the Creditor shall be granted relief from the stay 14 days after the rejection unless the Debtors file a modification of their plan to include the ongoing mortgage and all arrears and set the plan for confirmation hearing within said 14-day period.

The motion is supported by the Declaration of Robert Mackenzie and Sadhana Jones. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

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

2. 14-24805-B-13 IRA ROSS MOTION TO CONFIRM PLAN
MLA-8 Mitchell L. Abdallah 4-3-15 [120]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The third amended plan filed on March 15, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

3. 15-21405-B-13 THOMAS HURST
JPJ-1 C. Anthony Hughes

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-14-15 [22]

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)(3) & (d)(1) and 9014-1(f)(1). 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 sustain objection and conditionally deny the motion to dismiss.

This matter was continued from May 6, 2015, in order for the Chapter 13 Trustee to conduct a thorough examination of the Debtor under oath at the continued meeting of creditors held on May 14, 2015. The court's docket reflects that the § 341 meeting was held on May 14, 2015, that the Debtor and counsel appeared, and that the matter concluded on May 14, 2015.

Nonetheless, the Debtor is delinquent to the Trustee in the amount of $1,164.00, which represents approximately 1 plan payment. Before this matter is heard, an additional plan payment in the amount of $1,164.00 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

4. 12-35129-B-13 ANTHONY TEXIERA MOTION TO MODIFY PLAN
LBG-6 Lucas B. Garcia 4-6-15 [138]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated April 6, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deem this matter withdrawn and the Trustee's objections moot.

The first modified plan filed April 6, 2015, does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Debtor has also not provided the Trustee with some of the requested income and tax documents or his personal bank statements covering the time period of October 2014 through March 2015. As a result, the Trustee is unable to fully assess the feasibility of the plan pursuant to 11 U.S.C. § 1325(a)(6).

The first modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmable. Nevertheless, the Debtor has withdrawn the motion to confirm the first modified plan, rendering the Trustee's objection moot. Accordingly, this matter is deemed withdrawn.

5. 14-20335-B-13 ALFRED/ESTHER BURKES MOTION TO INCUR DEBT
RAC-2 Richard A. Chan 5-6-15 [27]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Authorize Debtos to Incur Poet-Petition Debt 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 and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase a 2009 Ford Escape ("Vehicle"), following the total loss of Debtors' vehicle post-petition. The total purchase price of the Vehicle is $16,498.00. The total amount financed with gap insurance, warranty, etc. will be $17,225.41, with interest paid at a rate of 19.95%. The monthly payment amount will be $459.67 per month for 60 months.

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

In order to make the monthly car payments, Debtors propose to reduce their recreational expenses by $100.00 and charitable contributions by $142.67. Debtors will still be able to maintain the payments to the Chapter 13 Trustee under the terms of the proposed plan and pay 100% of all general unsecured claims. Additionally, the approximately $8,600.68 that the insurance company paid out for the value of the totaled vehicle was applied to the Class 2 Claim of Ally Financial.

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

6. 15-22236-B-13 ELAINE BROWN — MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES
SJS-1 Scott M. Johnson — 5-5-15 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Debtor's Motion to Value Collateral of Consumer Portfolio Services 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 Consumer Portfolio Services ("Creditor") at $5,459.00.

The motion filed by Elaine Brown ("Debtor") to value the secured claim of Consumer Portfolio Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Honda Civic LX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,459.00 as of the petition filing date. As the owner, the Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,621.23. 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 $5,459.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

7. 14-21240-B-13 DIANE OHARA MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso 4-9-15 [91]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed April 9, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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 April 9, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

8. 15-22546-B-13 JOANNA CLARK
BLG-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF NATIONSTAR MORTGAGE, LLC
4-8-15 [17]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

The court's decision is to value the secured claim of Nationstar Mortgage, LLC ("Creditor") at $0.00.

The motion to value filed by Joanna Clark ("Debtor") to value the secured claim of Nationstar Mortgage, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1123 Pheasant Drive, Suisun City, California ("Property"). Debtor seeks to value the Property at a fair market value of $300,177.00 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).

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

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

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

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

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 first deed of trust secures a claim with a balance of approximately $362,379.69. Creditor's second deed of trust secures a claim with a balance of approximately $89,096.36. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

9. 14-32247-B-13 ROBERT/PAULINE COBBLER MOTION TO CONFIRM PLAN
JSO-2 Jeffrey S. Ogilvie 4-10-15 [33]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 10, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

10. 15-20147-B-13 ANGEL CHEUNG — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 4-6-15 [44]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion to Confirm Debtor's Second Amended Plan Filed on April 6, 2015, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 6, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

11. 11-34150-B-13 ROBERT/ANITA HOLLOWAY MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 4-13-15 [52]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have 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 April 13, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

12. 14-30950-B-13 JESUS AVILA
JWC-1 Douglas B. Jacobs

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-15 [22]

BBCN BANK VS.

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

The court's decision is to deny the Creditor's motion for relief from stay as moot.

BBCN Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2599 thru 2601 Esplande, Chico, California (the "Property"), which houses Debtor's Mexican restaurant, Tortilla Flats. Movant has provided the Declaration of Kelly Cho ("Cho Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant asserts that there are 2 post-petition defaults, with a total of $7,697.06 in post-petition payments past due. Additionally, Movant asserts there are approximately $272,501.23 in accrued and unpaid interest pre-petition.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $1,118,059.14 (including $957,920.14 secured by Movant's first deed of trust), as stated in the Cho Declaration and Schedule Debtor filed by Jesus Avila ("Debtor"). The value of the Property is determined to be $750,000.00, as stated in Schedules A and D filed by Debtor.

Opposition by Debtor

The Debtor asserts that the Movant now seeks to foreclose on the property on the sole ground that the Debtor was allegedly behind in his plan payments (Dkt. 22, p. 4, ll. 6-8). Debtor argues that Movant lacks cause under 11 U.S.C. § 362 to obtain relief from the automatic stay. The Debtor states that he is functioning and making payments under a confirmed plan (Dkt. 34, Exh. E). The hearing on confirmation was on January 8, 2015, and Movant made no objection. The plan was subsequently confirmed on February 23, 2015. The Debtor claims that he is up-to-date with his plan payments, is operating his restaurant out of the real property at issue here, and the restaurant is necessary for the Debtor's effective reorganization.

Discussion

The Trustee filed a Notice of Default and Application to Dismiss on March 26, 2015, which stated that, as of that date, the Debtor was delinquent in payments totaling $18,174.00, the Debtor's next payment of $9,087.00 was due on April 25, 2015, and the Debtor was required to pay a total of $27,261.00 by April 25, 2015, to cure his default. That notice of default gave the Debtor three options: (1) file a written objection by April 23, 2015, and set it for hearing with at least 14 days' notice if the Debtor believed there was no default; (2) admit default and pay $27,261 by April 25, 2015 (which was a Saturday, so by Monday, April 27, 2015); or (3) admit the default and file a modified plan and motion to confirm it within 30 days (which based on the March 28, 2015, BNC service date would have also been also been Monday, April 27, 2015). The Debtor chose none of these options and on May 6, 2015, the Trustee filed a declaration in support of dismissal which stated as much. Based on that declaration, the court dismissed this case in an order entered on May 6, 2015.

Dismissal renders the Creditor's motion for relief from stay and the Debtor's

opposition to the Creditor's motion moot. A review of the declaration submitted by the Debtor's attorney filed in support of the Debtor's opposition to the Creditor's motion confirms this. That declaration refers to an "Exhibit E" which is the Debtor's payment record to the Trustee dated May 4, 2015. Exhibit E shows that after the March 26, 2015 default notice, the Trustee received one plan payment in the amount of $9,098.00 from the Debtor on or about April 2, 2015, and another in the amount of $9,097.00 on or about April 28, 2015.

Neither the April 2, 2015, nor the April 28, 2015, payments cured the default stated in the Trustee's March 26, 2015, default notice. First, of the $27,261.00 the Debtor was required to pay by April 25, 2015, the Debtor paid only $9,087.00. Second, even if the $9,097.00 payment the Trustee received from the Debtor on April 28, 2015, was applied to the amount due by April 25, 2015, the Debtor would still have paid only $18,195.00 of the $27,261.00 required by April 25, 2015. Because the Debtor did not exercise any of the other options, i.e., file a written objection and set it for hearing or admit default and file a motion to confirm an amended plan, the case was properly dismissed on May 6, 2015, as a result of the Debtor's failure to cure his default within the time stated in the Trustee's default notice of March 26, 2015.

Therefore, based on the dismissal of this case on May 6, 2015, the Debtor's objection to the Creditor's motion for relief from the automatic stay and the Creditor's motion for relief from the automatic stay are moot. Creditor's motion for relief from stay is denied as moot.

13. 11-29056-B-13 GLORIA/PHILIP ODION — MOTION TO INCUR DEBT
DJL-1 Daryl J. Lander — 4-20-15 [25]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

The motion seeks permission to purchase a real property located at 601 Cold Springs Road, Placerville, California ("Property"), which Debtors have rented for the past seven years and now have the opportunity to purchase. The total purchase price of the Property is $357,500.00. The total loan amount to be financed through the Veterans Administration is $366,080.00, with a fixed interest rate of 3.750% for a total of 360 months. The loan will reduce Debtors' monthly rent payment, which is currently $2,000.00 per month, to a total monthly loan payment of $1,946.53.

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

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

14. 14-27661-B-13 MICHAEL/JURHEE POLLARD MOTION TO MODIFY PLAN
CA-4 Michael David Croddy 4-1-15 [49]

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

The court's decision is to confirm the first modified plan, with the following language to be added in the confirmation order: The Debtors have paid a total of $8,318.00 to the Trustee through April 25, 2015. Commencing May 25, 2015, monthly payments shall be $598.00 for the remainder of the plan.

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

15. 15-21167-B-13 LIBERTY MAHINAY — MOTION TO CONFIRM PLAN
RNE-5 Ronda N. Edgar — 4-6-15 [40]

Tentative Ruling: The Motion to Confirm Debtor's Second Amended Chapter 13 Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny confirmation of the second amended plan without prejudice.

First, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Second, the second amended plan does not specify a cure of the Wells Fargo post-petition arrearage, including a specific post-petition arrearage amount, interest rate, and monthly dividend. Because of this, the Trustee is unable to fully comply with § 2.08(b) of the plan.

The second amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

16. 15-23667-B-13 MICHELLE ALCALEN MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 5-6-15 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Extend or Reinstate Automatic Stay 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 not extend the automatic stay.

Michelle Alcalen ("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 (No. 14-25920-13J) was dismissed on March 9, 2015, after Debtor failed to cure the default, file a written objection and request a hearing, file a motion to modify her plan, perform the terms of the proposed modified plan pending its approval, or obtain approval of the modified plan, all within the time constraints allowed. *See* Order, Bankr. E.D. Cal. No. 14-25920-13J, Dkt. 25. 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 states that she will be able to make plan payments under her new Chapter 13 plan. In the previous case, the Debtor states that she fell behind in payments since her partner had some un-reimbursed medical expenses that prevented him from contributing to household expenses. The Debtor states that the medical issue is now resolved, but offers no further explanation as to why this will allow her to make payments she previously was unable to make because of these medical problems. Additionally, Debtor's partner now purportedly receives MetLife disability monthly payments, which the Debtor claims will assist in making payments under the new Chapter 13 plan. However, the Debtor has not provided proof of the MetLife disability monthly payments, the amount of those payments, or explained how they will help fund a new Chapter 13 plan.

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

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

17. 15-21973-B-13 CHRISTOPHER/SHERRY WILSON MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs 4-1-15 [14]

Thru #18

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

The court's decision is to allow the plan to be amended and confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 1, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

18. 15-21973-B-13 CHRISTOPHER/SHERRY WILSON MOTION TO APPROVE LOAN
DBJ-2 Douglas B. Jacobs MODIFICATION
5-1-15 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Debtor's [sic] Motion for Courts [sic] Approval of Trial Period Payments for Permanent Loan Modification 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 permit the loan modification requested.

The motion filed by Christopher Wilson and Sherry Wilson ("Debtors") seek court approval to incur post-petition credit. HSBC ("Creditor"), whose claim the amended plan (which is set for hearing on a motion to approve on May 20, 2015) provides for in Class 4, has agreed to a permanent loan modification after Debtors have made three trial period payments. The Debtors' trial period payments will be $774.39 each month for the months of May, June, and July 2015 (Dkt. 25, Exh. A). In the event that the modification is not approved, the Creditor shall be granted relief from the stay 14 days after the rejection unless the Debtors file a modification of their plan to include the ongoing mortgage and all arrears and set the plan for confirmation hearing within said 14-day period.

The motion is supported by the Declaration of Christopher and Sherry Wilson . The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and

Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

19. 14-30481-B-13 TERRY/MARLYS ARNOLD
RHM-1 Robert Hale McConnell
Thru #20

CONTINUED MOTION TO CONFIRM PLAN
12-29-14 [27]

SEE ITEM #20.

20. 14-30481-B-13 TERRY/MARLYS ARNOLD
RHM-3 Robert Hale McConnell

MOTION TO CONFIRM PLAN
4-2-15 [57]

Tentative Ruling: The Motion to Confirm a Chapter 13 Plan Filed April 2, 2015, has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to confirm the amended plan, with the following language to be added in the confirmation order: The amount of $3,250.00 in attorney's fees is to be paid through the plan and, as the plan is proposing a 100% dividend to the unsecured creditors, the plan is funded to pay the creditors without being over-extended and it would not be prejudicial to creditors.

The amended plan filed on April 2, 2015, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed. Confirmation of the amended plan filed April 2, 2015, renders Item #19 moot.

21.	11-20388-B-13 CAH-6	KELIKUPA/CASSY MATU Michael David Croddy	MOTION TO APPROVE LOAN MODIFICATION 4-16-15 [113]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

CONTINUED TO TUESDAY 5/26/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

22. 15-20089-B-13 MARTHA ROCHA
SNM-1 Stephen N. Murphy

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
2-20-15 [14]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

REMOVED FROM CALENDAR. NOTICE OF SETTLEMENT AND REQUEST TO VACATE HEARING FILED 5/11/15 (Dkt. 43). HEARING CONTINUED TO 8/05/15 AT 10:00 A.M.

23. 11-30591-B-13 MARY CORCORAN MOTION TO MODIFY PLAN
CJY-2 Christian J. Younger 4-10-15 [37]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

The court's decision is to permit the requested modification and confirm the first 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 first modified plan filed on April 10, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

24. 13-34891-B-13 MICHAEL/KATHERINE HOLLIDAY
NBC-3 Eamonn Foster

MOTION TO CONFIRM PLAN
4-8-15 [62]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The first plan filed on April 8, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

25. 14-24093-B-13 ARM NE AVETISYAN
APN-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
4-21-15 [28]

HYUNDAI LEASE TITLING TRUST
VS.

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion By Lessor, Hyundai Lease Titling, Trust, for Relief from Automatic Stay from the Debtor and the None-Filing Co-Debtor Re: 2014 Kia Cadenza has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Hyundai Lease Titling Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Kia Cadenza, VIN ending in -127978 (the "Vehicle"). The moving party has provided the Declaration of Efrain Novarro ("Novarro Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Movant states that Debtor has not made 4 post-petition payments, with a total of $2,489.80 in post-petition payments past due.

From the evidence provided to the court, the remaining sums due and owing under the prevailing lease agreement, including the purchase option to be paid by the Debtor, are $37,657.12.

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).

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

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

No other or additional relief is granted by the court.

26. 15-20896-B-13 MICHAEL/SUSAN FARMER
WW-1 Mark A. Wolff

MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE TO THE DECEASED DEBTOR AND CONTINUED ADMINISTRATION OF CASE
4-20-15 [33]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion for Substitution as Representative to the Deceased and Continued Administration of Case and Waiver of Certification of Requirement for Entry of Discharge has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 substitute the surviving Debtor who is appointed representative of the estate, continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Susan Farmer gives notice of death of her husband and Co-Debtor Michael Farmer and requests the court substitute Susan Farmer in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party**. There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule**

> **7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

27. 09-45297-B-13 NORMA LOYA
SNM-10 Stephen N. Murphy

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
4-17-15 [58]

Thru #30

Final Ruling: No appearance at the May 20, 2015 hearing is required.

CONTINUED TO TUESDAY 5/26/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

28. 09-45297-B-13 NORMA LOYA
SNM-7 Stephen N. Murphy

MOTION TO AVOID LIEN OF CALIFORNIA HOUSING FINANCE AGENCY
4-17-15 [45]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion for Judgment Avoiding Liens of California Housing Finance Agency has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 deny entry of a judgment avoiding liens of California Housing Finance Agency ("Creditor") and dismiss this motion without prejudice.

Even if a valuation motion is granted at the beginning of the case, a Chapter 13 debtor must still perform under the terms of a confirmed plan. If a Chapter 13 debtor fulfills all obligations under the chapter 13 plan and obtains a discharge, the debtor may then obtain an unconditional judgment avoiding a previously-valued lien and secured claim. Pursuant to Fed. R. Bankr. P. 7001(2), however, an adversary proceeding is necessary to obtain a judgment avoiding the lien and declaring it unconditionally invalid. Such relief cannot be obtained by way of a motion.

The Debtor here successfully filed, served, and prosecuted a valuation motion at the inception of this case. An order determining that the replacement value of the creditor's collateral and valuing the Creditor's secured claim at $0 was entered on March 11, 2009. The Debtor subsequently fulfilled her obligations under the terms of her confirmed Chapter 13 plan and was granted a discharge under § 1328(a) on April 6, 2015. However, in order to actually have the subject liens removed from her property, in this court's view, the Debtor must now commence an adversary proceeding under Fed. R. Bankr. P. 7001(2) which governs proceedings "to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)."

Therefore, the Debtor's motion for entry of a judgment will be denied and the motion dismissed without prejudice to the filing of an adversary proceeding under Fed. R. Bankr. P. 7001(2).

29. 09-45297-B-13 NORMA LOYA
SNM-8 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF REDEVELOPMENT AGENCY OF THE CITY OF FAIRFIELD AND/OR MOTION TO AVOID LIEN OF REDEVELOPMENT AGENCY OF THE CITY OF FAIRFIELD
4-17-15 [49]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

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

The court's decision is to deny entry of a judgment avoiding liens of Redevelopment Agency of the City of Fairfield ("Creditor") and dismiss this motion without prejudice.

Even if a valuation motion is granted at the beginning of the case, a Chapter 13 debtor must still perform under the terms of a confirmed plan. If a Chapter 13 debtor fulfills all obligations under the chapter 13 plan and obtains a discharge, the debtor may then obtain an unconditional judgment avoiding a previously-valued lien and secured claim. Pursuant to Fed. R. Bankr. P. 7001(2), however, an adversary proceeding is necessary to obtain a judgment avoiding the lien and declaring it unconditionally invalid. Such relief cannot be obtained by way of a motion.

The Debtor here successfully filed, served, and prosecuted a valuation motion at the inception of this case. An order determining that the replacement value of the creditor's collateral and valuing the Creditor's secured claim at $0 was entered on March 11, 2009. The Debtor subsequently fulfilled her obligations under the terms of her confirmed Chapter 13 plan and was granted a discharge under § 1328(a) on April 6, 2015. However, in order to actually have the subject liens removed from her property, in this court's view, the Debtor must now commence an adversary proceeding under Fed. R. Bankr. P. 7001(2) which governs proceedings "to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)."

Therefore, the Debtor's motion for entry of a judgment will be denied and the motion dismissed without prejudice to the filing of an adversary proceeding under Fed. R. Bankr. P. 7001(2).

30. 09-45297-B-13 NORMA LOYA
SNM-9 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF CITY OF FAIRFIELD AND/OR MOTION TO AVOID LIEN OF CITY OF FAIRFIELD
4-17-15 [53]

Final Ruling: No appearance at the May 20, 2015 hearing is required.

The Motion to Value Collateral and for Judgment Avoiding Lien of City of Fairfield has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at

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

The court's decision is to deny entry of a judgment avoiding liens of City of Fairfield ("Creditor") and dismiss this motion without prejudice.

Even if a valuation motion is granted at the beginning of the case, a Chapter 13 debtor must still perform under the terms of a confirmed plan. If a Chapter 13 debtor fulfills all obligations under the chapter 13 plan and obtains a discharge, the debtor may then obtain an unconditional judgment avoiding a previously-valued lien and secured claim. Pursuant to Fed. R. Bankr. P. 7001(2), however, an adversary proceeding is necessary to obtain a judgment avoiding the lien and declaring it unconditionally invalid. Such relief cannot be obtained by way of a motion.

The Debtor here successfully filed, served, and prosecuted a valuation motion at the inception of this case. An order determining that the replacement value of the creditor's collateral and valuing the Creditor's secured claim at $0 was entered on March 11, 2009. The Debtor subsequently fulfilled her obligations under the terms of her confirmed Chapter 13 plan and was granted a discharge under § 1328(a) on April 6, 2015. However, in order to actually have the subject liens removed from her property, in this court's view, the Debtor must now commence an adversary proceeding under Fed. R. Bankr. P. 7001(2) which governs proceedings "to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)."

Therefore, the Debtor's motion for entry of a judgment will be denied and the motion dismissed without prejudice to the filing of an adversary proceeding under Fed. R. Bankr. P. 7001(2).

31. 15-21314-B-13 NICOLE GRANDY — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
JPJ-2 Michael David Croddy — 5-6-15 [37]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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.

The court's decision is to convert this Chapter 13 case to a Chapter 7 proceeding.

This motion to convert or dismiss the Chapter 13 bankruptcy case of Nicole Grandy ("Debtor") has been filed by Jan Johnson ("Movant"), the Chapter 13 Trustee.

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).

The Debtor filed this Chapter 13 case on February 20, 2015. The § 341 meeting of creditors was held and concluded on April 2, 2015. The Debtor did not file a plan until March 20, 2015. She filed a motion to confirm that plan over a month later, on April 29, 2015 and, at that time, also set the confirmation hearing for May 13, 2015 – 14 days after the motion to confirm was filed.

Because the confirmation hearing was not set on the 42-days' notice required by LBR 3015-1(d)(1), 9014-1(f)(1), and FRBP 2002(b) – only 14 days' notice was provided – the court was unable to hold a confirmation hearing on May 13, 2015. Instead, on May 13, 2015, the court entered an order denying confirmation of the plan filed on March 20, 2015. The following day, May 14, 2015, the Debtor filed a first amended plan and a motion to confirm it which she set for hearing on July 1, 2015 - giving 48 days' notice.

The Trustee has moved to convert this case to a Chapter 7 proceeding or dismiss it. The Trustee argues this case should be converted or dismissed under § 1307(c)(1) because the Debtor has engaged in conduct that has caused unreasonable delay prejudicial to creditors. The Trustee relies on § 1324(b) which requires a confirmation hearing to be "held" no later than 45 days after the date of the § 341 meeting. *See* 11 U.S.C. § 1324(b). Based on the April 2, 2015 creditor's meeting the

45-day period expired on Monday, May 18, 2015. The Debtor, on the other hand, maintains that § 1324(b) requires only that a confirmation hearing be set within the 45-day period and it does not require that a plan be confirmed by that deadline. Stated another way, the Debtor maintains that a confirmation hearing knowingly set on defective notice is a hearing "held" under § 1324(b). For the reasons explained below, the court disagrees with the Debtor and agrees with the Trustee.

Nowhere in § 1324(b) does it state that a confirmation hearing shall be "set" within 45 days of the § 341 meeting as the Debtor suggests. Rather, § 1324(b) clearly states that a confirmation hearing is to be "held" 45 days after the § 341 meeting. Thus, § 1324(b) requires an actual confirmation hearing. *See In re Hegeduis*, 525 B.R. 74, 82 (Bankr. N.D. Ind. 2015); *In re Tiliiakos*, 2013 WL 3943502 at *3 (Bankr. M.D. Fla. 2013). And, of course, the court's ability to hold a confirmation hearing requires proper notice of the hearing in the first instance since the court cannot "hold" a confirmation (or any other) hearing on defective notice. Proper notice of a confirmation hearing in this district requires at least 42-days' notice. Because the Debtor set the hearing on the April 29, 2015, motion to confirm on 14-days' notice, a confirmation hearing was not (and could not have been) "held" on May 13, 2015.

The first date on which a confirmation hearing can be "held" in this case – because notice of the hearing is proper – is July 1, 2015. Unfortunately for the Debtor, that is 90 days after the § 341 creditors' meeting and 44 days after the 45-day period of § 1324(b) which expired on May 18, 2015. As a result, it is now impossible for the court to "hold" confirmation hearing within the time required by § 1324(b). *See In re Butcher*, 459 B.R. 115, 119 (Bankr. D. Colo. 2011) ("11 U.S.C. § 1324(b) requires chapter 13 confirmation hearings to be held between 20 and 45 days after the § 341 meeting date. It gives the Court discretion to hold the confirmation hearing sooner but not later."). Conversion or dismissal, therefore, is appropriate. *See In re Donnell*, 2012 WL 8255546 at *2 (Bankr. E.D. Cal. 2012).

Conversion, rather than dismissal, is in the best interest of the creditors in this case. Conversion is the best interest of creditors because the Debtor has significant non-exempt assets that will benefit creditors in a Chapter 7 proceeding. According to Schedules A, B, and C the total value of non-exempt property in the estate is $152,942.23. Unreasonable prejudicial delay under § 1307(c)(1) provides the requisite "cause" for conversion.

Delay in this case is prejudicial. Congress has established a strict deadline for holding a confirmation hearing in a Chapter 13 case. Delay in the confirmation process is inherently prejudicial because it frustrates Congressional intent and national policy that a Chapter 13 case proceed to confirmation expeditiously. *See Butcher, supra*, 459 B.R. at 119; *Tiliakos, supra.*

Delay in this case is also unreasonable because it involves a misuse and abuse of the Chapter 13 confirmation process. The Debtor delayed in filing a plan and, upon realizing it was too late to confirm that plan, engaged in a last-minute, bad faith effort to circumvent § 1324(b) by attempting to manipulate the confirmation process. The court takes judicial that the April 29, 2015, confirmation motion and the corresponding notice that set the May 13, 2015, confirmation hearing are signed by Michael David Croddy, Esq. The court also takes judicial notice that Mr. Croddy is counsel of record in 1,122 cases filed and/or pending in this court. In other words, Mr. Croddy is a seasoned bankruptcy practitioner who knows or should know that a confirmation hearing must be set on at least 42-days' notice, a confirmation hearing set on 14-days' notice is patently defective, and a confirmation hearing (or any hearing) cannot be held on patently defective notice.

The court determines that it is unnecessary to further develop the record in this matter since the Debtor has twice now opposed the Trustee's motion to convert or dismiss. The Debtor's request for a briefing schedule is therefore denied.

Based on all the foregoing, this Chapter 13 case is converted to a case under Chapter 7 of the Bankruptcy Code.

32. 15-23473-B-13 RODNEY/CHRISTINE HOLLAND MOTION TO EXTEND AUTOMATIC STAY
BLG-1 Pauldeep Bains 5-6-15 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Extend Automatic Stay as to All Creditors Pursuant to 11 U.S.C. § 362(c)(3)(B) 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 not extend the automatic stay.

Rodney Holland and Christine Holland ("Debtors") seek 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case (No. 11-21705) was dismissed on June 19, 2014, after Debtors failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 11-21705, Dkt. 114. 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.

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 filed 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). Consequently, the Debtors here state that they now have steady income and feel certain that they will not fall behind on plan payments in this new case. Joint Debtor is now receiving consistent disability pay, which Debtors believe will ensure successful completion of the new Chapter 13. However, the Debtors have not provided proof of Joint Debtor's disability payments that will ensure that Debtors can make plan payments under the new Chapter 13 plan.

The Debtors have not sufficiently rebutted by clear and convincing evidence the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. For example, the Debtors provide no information regarding the amount of disability supposedly received or how that amount will facilitate payments under a confirmed plan.

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