UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: May 21, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 21, 2019 at 1:00 p.m.

1.	18-26701-B-13 JPJ-1	GEORGE MOUNZ AND BECKY RUIZ-MUNOZ Justin K. Kuney	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 11-1 3-19-19 [30]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 11-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 11-1. The claim is asserted to be in the amount of $361.49. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about March 13, 2004, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 25, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

2.	19-21803-B-13 JPJ-01	ESTEBAN VILLA AND ALICIA ROBERTS-VILLA Ronald W. Holland	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 5-1-19 [24]

No Ruling

3.	16-23404-B-13 JJC-1	CHARLES/BARBARA LOWAS Julius J. Cherry	MOTION TO SUBSTITUTE DECEASED PARTY 4-12-19 [26]

Final Ruling

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

The court's decision is to substitute Joint Debtor to continue administration of the case.

Joint Debtor Barbara Lowas gives notice of the death of her husband Debtor Charles Lowas and requests the court to substitute Joint Debtor in place of Debtor for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Barbara Lowas for Charles Lowas as successor-in-interest. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will enter a minute order.

4.	18-24304-B-13 JPJ-1	CARLTON/CHERYL PHENIX Mary Ellen Terranella	OBJECTION TO CLAIM OF BANK OF AMERICA/WILLIAMSON AND BROWN, LLC, CLAIM NUMBER 31 4-5-19 [35]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 31 of Bank of America/Williamson and Brown LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Bank of America/Williamson and Brown LLC ("Creditor"), Proof of Claim No. 31 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $544.90. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was September 18, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 15. The Creditor's proof of claim was filed September 29, 2018.

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

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

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

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

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

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

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

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

The court will enter a minute order.

5.	19-20204-B-13 MJD-3	MARY SIMPSON Matthew J. DeCaminada	MOTION TO CONFIRM PLAN 4-11-19 [47]

No Ruling

6. 19-20007-B-13 NICHOLAS BONANNO
GLF-2 Marc Voisenat

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
4-19-19 [53]

THE SOCOTRA OPPORTUNITY FUND, LLC VS.

Tentative Ruling

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

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

Introduction

Secured creditor The Socotra Opportunity Fund, LLC ("Creditor") moves for relief from the automatic stay of 11 U.S.C. § 362(a) for "cause" under 11 U.S.C. § 362(d)(1). Dkt. 53. Debtor Nicholas Bonanno ("Debtor") has opposed the motion. Dkt. 65. Creditor replied to the Debtor's opposition. Dkt. 74.

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. For the reasons explained below, Creditor's motion will be denied without prejudice.

Background

In April of 2017, Debtor obtained a $370,000.00 loan from Socotra Capital, Inc. Dkt. 55 at ¶4. The loan is evidenced by a promissory note and secured by deed of trust that encumbers the Debtor's property at 7929 Butte Ave., Sacramento, California ("Property"). *Id.* The note and deed of trust were assigned to Creditor in April of 2017. *Id.* at ¶9.

The loan was a 24-month loan with a maturity date of June 1, 2019. *Id.* at ¶11. However, Creditor states that it accelerated the loan due to multiple defaults by the Debtor. *Id.* at ¶ 12. Creditor's acceleration made the loan due and payable in full, which the Debtor then failed to pay. *Id.* As a result, a notice of default was recorded in September 2018, a notice of trustee's sale was recorded in December 2018, and a trustee's sale of the Property was scheduled for January 3, 2019. *Id.* at ¶ 13, 15.

No sale occurred because on the day before the scheduled trustee's sale, January 2, 2019, the Debtor filed the petition that commenced this Chapter 13 case. Dkt. 1.

Creditor states that the unpaid balance due on the loan as of the petition date was $409,314.03. Dkt. 55 at ¶18. As of the date the motion was filed, April 19, 2019, that amount increased to $439,019.37. *Id.* at ¶19. Creditor also states that the Debtor has not made (and is not making) postpetition payments, *id.* at ¶20, and it has not received any proof from the Debtor that the Property is insured. *Id.* at ¶ 24.

Discussion

Section 362(d) of the Bankruptcy Code provides for relief from the automatic stay for cause, including a lack of adequate protection. 11 U.S.C. § 362(d)(1). Creditor groups its grounds for relief on the basis of cause into three categories: (1)

inadequate protection, (2) lack of insurance, and (3) bad faith.[1] None of these provide a basis for relief.

Creditor is Adequately Protected

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Creditor submitted no evidence of the Property's value with its motion. The only evidence of the Property's value is in Schedule A/B which values the Property at $850,000.00. Dkt. 1 at 2.

Schedules are filed under penalty of perjury. *See* Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at $850,000.00.[2]

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed $439,019.27 as of April 2019. Based on the Property's $850,000.00 value that leaves equity of $410,981.00 which, in turn, creates an equity cushion of 48.350%. Creditor is therefore adequately protected, even in the absence of postpetition payments.

Lack of Insurance

Creditor assets that it "has not received any proof of insurance from Debtor regarding the Property, despite Debtor's obligation to insure the Property under the Loan Agreement." Dkt. 55 at ¶24. Debtor states that the Property is insured. Dkt. 65 at 3:14-15.

Notably, Creditor does not state that it demanded proof from the Debtor that the Property is insured and the Debtor failed or refused to provide it.

Although the Debtor bears the burden on all issues except the existence of equity, *see* 11 U.S.C. § 362(g)(2), Creditor, as the party moving for stay relief, must still make some prima facie showing and blindly asserting a claim without some evidentiary production does not cut it. *See In re Spencer*, 568 B.R. 278, 279-80 (Bankr. W.D. Mich. 2017) (citations omitted). In other words, merely stating that proof of insurance has not been provided without any evidentiary indication that the Debtor was asked to produce it is not sufficient. *See id.* at 279. *Palcios v. Upside Investments, LP (In re Palcios)*, 2013 WL 1615790 (9th Cir. BAP 2013), illustrates this point.

In *Palcios*, the bankruptcy appellate panel held that a lack of insurance may be a basis for relief from the automatic stay for cause. *Id.* at 3. And on that basis it affirmed

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[1] These include failure to make postpetition payments resulting in a lack of adequate protection, failure to provide proof the Property is insured, bad faith filing of this Chapter 13 case the day before a scheduled foreclosure, and prepetition violations of the loan documents. *See* dkt. 53 at 1:23-2:3.

[2] If Creditor believes that the Property has a different value, it is incumbent on Creditor to produce evidence of that different value. It has not done that. In the absence of contrary evidence, the court may accept the Debtor's sworn scheduled value as conclusive. *See Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

the bankruptcy court's order terminating the automatic stay when the debtor failed to provide a secured creditor with proof its real property collateral was insured as required by the terms of a deed of trust. *Id.* In so doing, however, the bankruptcy appellate panel noted that the secured creditor had produced some evidence that the debtor was on notice that secured creditor wanted proof its collateral was insured *before* the stay relief motion was filed. *Id.* As noted above, Creditor has produced no such evidence here.

Bad Faith

Creditor contends the Debtor filed this Chapter 13 case in bad faith because the Debtor filed it the day before a scheduled trustee's sale of the Property. The court disagrees.

The Debtor did not acquire an interest in the Property and then file bankruptcy the day before a scheduled foreclosure. *See In re Powers*, 135 B.R. 980, 1002 (Bankr. S.D. Cal. 1991). The Debtor did not file bankruptcy the day before a foreclosure sale and schedule property he does not own in order to create an appearance the property is property of the estate protected by the stay. *See In re Gilbert*, 535 B.R. 317, 325 (Banrk. C.D. Cal. 2015). The Debtor has not repeatedly filed bankruptcy cases in order to stop foreclosures. *See In re Bradley*, 38 B.R. 425, 431 (Bankr. C.D. Cal. 1984) (citing and discussing cases). And the Debtor has not failed to prosecute this case after filing it to stop a foreclosure sale. *See In re Campora*, 2015 WL 5178823, 11 (E.D.N.Y. 2015).

It is true that the Debtor filed this Chapter 13 case the day before Creditor's scheduled trustee's sale and the filing of this case did in fact prevent that sale from going forward. That explains the initial skeletal filing. However, there is no evidence that the Debtor engaged any other conduct typically associated with a pre-foreclosure filing to suggest that the Debtor filed this Chapter 13 case in bad faith or for an improper purpose. Required documents that were not filed with the petition were timely filed and the Debtor has appeared in proper prosecution of this case subsequent to its filing.

Remaining Cause

The court does not consider Debtor's prepetition defaults under the note and deed of trust to be sufficient cause for stay relief. Those defaults will be cured if a plan can be confirmed.

The court also declines to rule on feasibility issues in the context of Creditor's stay relief motion. Although plan confirmation issues may be considered in the context of a stay relief motion when deciding if relief is warranted for cause under § 362(d)(1), there must be a plan pending for confirmation when the stay relief motion is heard. *See Palacios*, 2013 WL 1615790, *4-*5. That is not the case here. The court recently denied confirmation of the Debtor's plan on May 9, 2019. Dkts. 68, 70, 72-73. The Debtor has not yet filed another plan. There are therefore no confirmation issues to consider in relation to Creditor's stay relief motion.

Conclusion

For all the foregoing reasons, Creditor's motion for relief from the automatic stay is denied without prejudice.

The court will enter a minute order.

7. 19-21010-B-13 ETL-1 **Thru #8**
CLARENCE COOK
John G. Downing
OBJECTION TO CONFIRMATION OF PLAN BY TRINITY FINANCIAL SERVICES, LLC
4-30-19 [35]

Tentative Ruling

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

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

Objecting creditor Trinity Financial Services, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $108,308.90 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed April 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

8. 19-21010-B-13 JGD-1
CLARENCE COOK
John G. Downing
MOTION TO CONFIRM PLAN
4-16-19 [27]

Tentative Ruling

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

The court's decision is to not confirm the first amended plan.

First, feasibility depends on the granting of motions to value collateral for the Internal Revenue Service and Trinity Financial Services, LLC, both which are listed in Class 2B of the plan filed April 16, 2019. The Debtor has not filed, set for hearing, or served on the respondent creditors and the Trustee a stand-alone motion to value the collateral.

Second, the plan provides for Trinity Financial Services, LLC in Class2B to reduce the secured claim based on the value of the collateral of $94,687.00. Section 1322(b)(2) prohibits a Chapter 13 Debtor from relying on § 506(a) to reduce an undersecured homestead mortgage to the fair market value of the residence. *Nobleman v. American Savings Bank*, 508 U.S. 324 (1993).

Third, both the Internal Revenue Service and Trinity Financial Services, LLC should not

be classified in Class 2B but rather Class 2A. According to Schedule A/B, the value of Debtor's real property at 227-229 North 6th Street, San Jose, California, is $975,000.00. According to Schedule D, the amount of the claim for Select Portfolio Services is $401,869.09 and the amount of the claim for Trinity Financial Services, LLC is $202,000.00. According to the proof of claim filed by the Internal Revenue Service, the amount of the claim that is secured is $49,100.92. The total amount of secured claims is approximately $652,970.01, which si significantly less than the value of the real property. These claims cannot be reduced based on the value of the collateral and the appropriate classification for these claims is Class 2A.

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

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

The court will enter a minute order.

9. 19-21414-B-13 JOSEPH PETERSON
JPJ-2 Catherine King

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-17-19 [25]

WITHDRAWN BY M.P.

Final Ruling

The Trustee having filed a Notice of Withdrawal for the pending objection, the withdrawal being consistent with any opposition filed to the objection, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the objection, and good cause appearing, the objection is dismissed without prejudice.

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

The court will enter a minute order.

10. 19-21517-B-13 BRUCE SOX
DVW-1 Marc A. Caraska

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF FROM CO-DEBTOR STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-7-19 [19]

U.S. BANK, N.A. VS.
DEBTOR DISMISSED: 04/01/2019

Final Ruling

The case was dismissed on April 1, 2019. Therefore, the motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11.	18-27529-B-13 JPJ-1	YESENIA GONZALEZ Muoi Chea	OBJECTION TO CLAIM OF PYOD, LLC, CLAIM NUMBER 8-1 3-19-19 [31]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 8-1 of PYOD, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of PYOD, LLC ("Creditor"), Claim No. 8-1. The claim is asserted to be in the amount of $659.10. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 6, 2005, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 2, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

12.	19-20131-B-13 TBG-1	ROBIN BACON AND KAREN HARRELL Stephan M. Brown	MOTION TO CONFIRM PLAN 4-12-19 [21]

No Ruling

13. 16-28433-B-13 TINA VAUNHEFFLYUNN MOTION TO REFINANCE
JLK-2 James L. Keenan 5-7-19 [29]

Tentative Ruling

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

The court's decision is to grant the motion subject to the inclusion of the Chapter 13 Trustee's additional order provisions.

Debtor seeks to modify her mortgage through a single loan from Caliber Home Loans that refinances Debtor's existing mortgage with Wells Fargo Bank on real property located at 8435 Crystal Walk Circle, Elk Grove, California. The terms of the proposed mortgage provide for a 30-year fixed mortgage of $211,000 with a 6.375% note interest rate. Monthly payments on the new mortgage are to be $1,873.37, which includes a property tax and insurance impound. The conditional loan approval is attached as dkt. 31, exh. A.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

Wells Fargo Bank, N.A. has also filed a response stating that it does not oppose the motion so long as its second deed of trust is paid in full or at an amount less than the full payoff pursuant to the written consent of Wells Fargo Bank, N.A. The creditor's request for additional order provisions is denied.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan dated December 27, 2016. 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 will be granted.

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

IT IS FURTHER ORDERED that the order confirming include the Chapter 13 Trustee's additional provisions as stated at dkt. 35.

The court will enter a minute order.

14. 19-21533-B-13 ROGER/CARRIE WILLEMS MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 4-11-19 [24]

Tentative Ruling

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

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

Subsequent to the filing of the Trustee's objection, an amended plan was filed on May 9, 2019. The confirmation hearing for the amended plan is scheduled for June 18, 2019. The earlier plan filed April 10, 2019, is not confirmed.

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

The court will enter a minute order.

15. 19-21346-B-13 CHARLES KOCH MOTION TO CONFIRM PLAN
MOH-1 Michael O'Dowd Hays 4-16-19 [29]

No Ruling

16. 15-22149-B-13 MATTHEW MCKEE
APN-1 Peter G. Macaluso
Thru #17
WELLS FARGO BANK, N.A. VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-18 [58]

No Ruling

17. 15-22149-B-13 MATTHEW MCKEE
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
2-5-19 [70]

No Ruling

18. 18-20749-B-13 JACKIE MELLOW — MOTION TO CONFIRM PLAN
MJD-8 Matthew J. DeCaminada — 4-15-19 [65]

Final Ruling

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

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

The court will enter a minute order.

19.	18-22753-B-13 JPJ-1	JOANNE LAWSON Seth L. Hanson	OBJECTION TO CLAIM OF ACAR LEASING LTD/GM FINANCIAL LEASING, CLAIM NUMBER 17 4-5-19 [31]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 17 of ACAR Leasing LTD/GM Financial Leasing and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of ACAR Leasing LTD/GM Financial Leasing ("Creditor"), Proof of Claim No. 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $9,688.20. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 12, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed July 24, 2018.

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

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

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

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

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

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

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

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

The court will enter a minute order.

20.	19-20354-B-13 JPJ-2	ERIC BENSON AND KARRI O'DONNELL Stephen M. Reynolds	OBJECTION TO CLAIM OF CAVALRY SPV 1, LLC, CLAIM NUMBER 1 3-20-19 [42]

See Also #48

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 1-4 of Cavalry SPV, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Cavalry SPV, LLC ("Creditor"), Claim No. 1-4. The claim is asserted to be in the amount of $1,271.65. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about December 3, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 20, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

21. 18-22156-B-7 ROBERT/DEANNA HAMMAN — MOTION TO APPROVE LOAN MODIFICATION
HLG-6 Kristy A. Hernadez — 4-23-19 [100]

CASE CONVERTED: 05/07/2019

Final Ruling

The case was converted on May 7, 2019. Therefore, the motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. 18-25756-B-13 DAVID SIMS
PGM-3 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
3-22-19 [66]

Tentative Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Two oppositions were filed in response to the motion. One was filed by Bosco Credit, LLC ("Bosco"). Dkt. 71. The other was filed by the Chapter 13 Trustee ("Trustee"). Dkt 81. The Debtor has replied to both oppositions. Dkts. 84-85 (Trustee), dkt. 88 (Bosco).

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

Introduction

The Debtor's motion was initially heard on May 7, 2019. The court continued the hearing to May 21, 2019, to further consider a § 1322(b)(2) issue related to Bosco's secured claim. Dkt. 91. Bosco was ordered to file its foreclosure-related documents by May 14, 2019. *Id.* Bosco timely complied. Dkts. 92, 93.

The court has reviewed the motion, oppositions, replies, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case and in the Debtor's prior Chapter 13 case, Case No. 17-20765. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. For the reasons set forth below, Bosco's and the Trustee's objections to confirmation are overruled, the motion to confirm will be granted, and the Debtor's second amended plan will be confirmed.

Background

On or about June 2017, the Debtor obtained a home equity line of credit in the amount of $113,456.00 from Cal State 9 Credit Union. *See In re Sims*, case no. 17-20765, dkt. 25 at 2:2-7. The equity line is secured by a second priority deed of trust recorded against the Debtor's property at 3615 6th Avenue, Sacramento, California ("Property"). *Id.*, 2:4-7. The Property is the Debtor's principal residence. Dkt. 71 at 3:2-4.

The equity line and deed of trust were subsequently transferred and assigned to Bosco. Case No. 17-20765, dkt. 25 at 2:7-11. The equity line has a maturity date of June 15, 2032. *See* Claim No. 1-1. Upon default, however, the loan documents permit Bosco to accelerate the entire debt and require payment in full of all outstanding balance. *Id.*, attachment 1 at ¶ 14. Bosco has exercised that right.

The Debtor defaulted under the terms of the equity line. Case no. 17-20765, dkt. 25 at 2:12-13. That default resulted in notice of default and election to sell, dkt. 93, exh. 1, and a subsequent notice of trustee's sale with a trustee's sale date of February 9, 2017. *Id.*, exh. 2.

No sale occurred because two days before the scheduled trustee's sale, February 7, 2019, the Debtor filed his first Chapter 13 case. *See Sims*, case no. 17-20765. That case was subsequently dismissed on July 18, 2018. *Id.*, dkt. 227. The Debtor filed the petition that commenced this case on September 12, 2018.

Discussion

There is no dispute that Bosco's claim (1) is a secured claim; (2) is secured only by the Property; and (3) the Property is Debtor's principal residence. Bosco's claim is therefore the type of claim that, absent an applicable exception, falls within the anti-modification provision of § 1322(b)(2).

Debtor's inclusion of Bosco's secured claim in Class 2 of the second amended plan triggers a potential exception to § 1322(b)(2) under § 1322(c)(2) which states as follows:

> Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
>
> [. . .]
>
> (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c); *see Palacios v. Upside Investments, LP*, 2013 WL 1615790, *4 (9th Cir. BAP 2013) ("However, § 1322(c)(2) carves out an exception to the anti-modification rule against home mortgages[.]"); *see also In re Draper*, 2015 WL 7264669, *3 (Bankr. E.D. Va. 2015) ("Subsection (c) of § 1322 of the Bankruptcy Code now sets forth a clear exception to the 'anti-modification' provision contained in § 1322(b)(2)."). The § 1322(c)(2) exception permits a debtor to modify a claim secured by the debtor's principal residence by paying it over the life of the plan in accordance with § 1325(a)(5). *Benafel v. One West Bank, FSB (In re Benefal)*, 461 B.R. 581, 591 (9th Cir. BAP 2011) ("[S]ubsection 1322(c)(2) provides an exception to (b)(2) in that, if the last payment on the original payment schedule for a mortgage is due before the final plan payment, the debtor may pay the claim as modified pursuant to § 1325(a)(5)."). Modification includes the interest rate as well. *In re Bagne*, 219 B.R. 272, 276-77 (Bankr. E.D. Cal. 1998).

The equity line loan documents provide for an acceleration of the debt if the Debtor defaults on the terms of the his obligation. The debtor defaulted, and Bosco did just that. Bosco accelerated the equity line debt when it initiated foreclosure proceedings. Indeed, the notice of sale required any buyer of the Property to pay the entire unpaid equity line loan balance, then $209,170.08, in full at the time of the foreclosure sale.

Bosco's permissible acceleration of the equity line debt based on the occurrence of certain events specified in the loan documents matured the loan, caused the last payment due on the equity line to be moved from the date stated in the loan documents to a date before the last payment due under the second amended plan, and brought the equity line debt within the scope of § 1322(c)(2)'s exception to § 1322(b)(2)). *In re Brown*, 428 B.R. 672, 676 (Bankr. D.S.C. 2010) (concluding that prepetition acceleration of reverse mortgage debt upon death of obligor matured the loan, made last payment on loan due before the final payment due under debtor's plan, and brought loan within scope of 1322(c)(2)); *see also In re Michaud*, 548 B.R. 582, 584 (Bankr. S.D. Fla. 2016) (agreeing with *Brown's* conclusion that prepetition acceleration of the note caused the last payment of the debt to be moved so that it is prior to a date of the final payment of the debtor's plan); *see also In re Griffin*, 489 B.R. 638, 642 (Bankr. D. Md. 2013); *In re Nepil*, 206 B.R. 72, 76-77 (Bankr. D. N.J. 1997) (mortgage debt accelerated by foreclosure).[3] Accordingly, the Debtor's classification of Bosco's secured claim in

[3]The court is aware that there is contrary authority. *See In re Amos*, 259 B.R. 259 B.R. 317, 319–20 (Bankr. C.D. Ill. 2001); *see also In re Anderson*, 458 B.R. 494, 502–03 (Bankr. E.D. Wis. 2011) ("The last payment on the original debt in this case would have been April 1, 2037. The mortgage was accelerated by default and the foreclosure judgment creates a new due date, but it does not change the original date. *See, e.g., In re Rowe*, 239 B.R. 44 (Bankr. D. N.J. 1999). Section 1322(c)(2) does not apply in this case."). This court does not find those decisions persuasive for two reasons.

First, according to the statute's legislative history the purpose of §

Class 2 of the second amended plan to be paid over the plan term is appropriate and is not an impermissible modification under § 1322(b)(2). Bosco's objection to the contrary is therefore overruled.

Based on the court's conclusion that Bosco's secured claim is appropriately classified in Class 2 of the second amended plan, the court is further persuaded that the Debtor's plan is feasible. Debtor has no unsecured claims and Bosco's second deed of trust is the only creditor being paid through the plan. Dkt. 85 at ¶11. Debtor proposes stepped-up payments to Bosco that result in payment of the equity line in full. Dkt. 68, § 7. Schedules I/J, dkt. 1, reflect that the Debtor has sufficient income to make the initial payments to the Trustee for payment to Bosco. And based on the Debtor's declaration filed on April 30, 2019, dkt. 85, the court is further persuaded that the Debtor has the ability within the time contemplated by § 7 of the second amended plan to generate income sufficient to make the required stepped-up payments. The Trustee's and Bosco's feasibility objections are therefore overruled.

The Debtor's motion to confirm the second amended plan is granted and the second amended plan is ordered confirmed.

The court will enter a minute order.

1322(c)(2) was to overrule *First National Fidelity Corp. v. Perry (In re Perry)*, 945 F.2d 61 (3d Cir. 1991), which held that under § 1322(b)(2) a debtor could not utilize § 1325(a)(5) to provide for a mortgage debt that, because of a foreclosure, was due in full prior to the due date of the final payment of the plan by paying the full amount of the secured claim though the chapter 13 plan. *See Brown*, 428 B.R. at 676-77. Second, when loan documents contemplate acceleration of the debt upon the occurrence of a specified event and that event occurs causing the loan to accelerate and mature by its terms, moving loan maturity from a later to an earlier date is part of the "original payment schedule" contemplated by the loan documents. *See id.* at 676.

23. 18-22357-B-13 LEONEL/LISA LAXAMANA
BLG-6 Chad M. Johnson

MOTION TO APPROVE LOAN MODIFICATION
4-22-19 [99]

Final Ruling

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

The court's decision is to permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Bank of America ("Creditor"), whose claim the plan provides for in Class 4, has agreed to the loan modification. The terms of the modified loan are as follows: (1) the new principal balance is $128,817.18, and (2) the maturity date has been extended to May 9, 2033. *See* dkt. 102, exh. A. The only changes per this modification are the principal balance and maturity date. All other terms of the contract remain the same. *See* Claim No. 6.

The motion is supported by the Declaration of Leonel Laxamana and Lisa Laxamana. The Declaration affirms Debtors' desire to obtain the post-petition financing.

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.

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

The court will enter a minute order.

24.	19-20857-B-13 PSB-1	JOHN STANTON Pauldeep Bains	MOTION TO CONFIRM PLAN 4-3-19 [26]

No Ruling

25.	19-21257-B-13 CJO-1	SOLEDAD/BRIAN ASH Pauldeep Bains	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NAVY FEDERAL CU 3-29-19 [13]

Tentative Ruling

This matter was continued from May 7, 2019. The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Navy Federal CU holds a deed of trust secured by the Debtors' residence. The creditor has filed timely Claim No. 9-1 in which it asserts $693.52 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

26. 19-22860-B-13 ANN COLTRIN
AB-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-7-19 [10]

JAMES B. NUTTER & COMPANY
VS.

Tentative Ruling

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

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

James B. Nutter & Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 27 Nash Lane, Oroville, California (the "Property"). Movant has provided the Declaration of Al Pitzner and Declaration of Elizabeth A. Sperling to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Pitzner Declaration states that there are $358,813.98 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $358,813.98 and the value of the Property is determined to be $490,000.00 as stated in the Pitzner Declaration.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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

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

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

"*(A) transfer of all or part ownership of, or other interest in, such real property*

without the consent of the secured creditor or court approval; or

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

The Debtor and her husband, David D. Coltrins, (collectively "Coltrins") have filed eleven total bankruptcies since 2001, seven of those bankruptcies since 2013, each on or immediately before a foreclosure date, and each dismissed by the court shortly thereafter when required bankruptcy papers were not filed. Movant has been required to advance taxes and insurance on the Property since 2013, the Coltrins have not paid their property taxes since 2007, Movant has had to take out lender's force-placed insurance on the Property from 2013 through 2019, and the Coltrins have paid Movant nothing since August 2015. After jointly filing five serial bankruptcies beginning on September 28, 2016, in order to stop scheduled foreclosure sales, all of which were dismissed in two months or less, Mr. Coltrin filed his tenth overall bankruptcy the day before a foreclosure was scheduled this past February 2019. After that case was dismissed in only 18 days, he improperly transferred title to the Property to David D. Coltrin and Ann C. Coltrin, husband and wife, as joint tenants with rights of survivorship, without the consent or knowledge of Movant. Then, near-simultaneously, Debtor, filed this latest bankruptcy petition, her tenth overall and the eleventh between the Coltrins, to stop the foreclosure on May 3, 2019, the most recently scheduled sale date. The court finds that the Debtor's multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Based on the number of abusive and improper purposes filings referenced above, the 14-day stay of enforcement under Rule 4001(a)(3) is waived to permit the immediate enforcement of the court's order.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

27. 16-24161-B-13 ALONZO/NORMA MUNGUIA — MOTION TO MODIFY PLAN
WSS-4 W. Steven Shumway — 4-12-19 [56]

No Ruling

28.	18-25461-B-13 JPJ-1	JENNIFER SCOTT August Bullock	OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 8 4-5-19 [20]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 8 of Citibank N.A. and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Citibank N.A. ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $9,195.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 7, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed November 8, 2018.

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

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

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

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

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

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

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

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

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

The court will enter a minute order.

29. 19-21764-B-13 SHEMILA JOHNSON
JPJ-01 Michele M. Poteracke

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-1-19 [17]

Tentative Ruling

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,237.50, which represents approximately 1 plan payment. The Debtor has failed to make any plan payments since the petition was filed on March 22, 2019. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Third, the plan payment in the amount of $2,237.50 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Fourth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes an expense for rent that exceeds the Internal Revenue Service standards and improper expenses for Debtor's non-filing spouse that have already been accounted for in Form 122C-1, Lines 7 and 11. The correct amount of total adjustments at Line 44 is or should be $16,290.41, the Debtor's monthly disposable income is $1,747.59, and the Debtor must pay no less than $104,855.40 to unsecured nonpriority claims. The plan proposes to pay $0.00 to nonpriority claims.

Fifth, the Debtor has not disclosed her occupation, employer's name, and employer's address on Schedule I. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

The plan filed March 22, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

30. 19-20476-B-13 JPJ-2 — JEFFERY/ANNA SISK, Dale A. Orthner — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1, 3-20-19 [41]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 1-1 of Cavalry SPV, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Cavalry SPV, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $14,716.77. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 16, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 26, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

31. 18-23983-B-13 JPJ-2 **Thru #32**
SHARON LOCKETT
Richard L. Jare
OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM NUMBER 9
4-5-19 [63]

Final Ruling

The case was dismissed on May 7, 2019. Therefore, the objection is dismissed as moot.

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

The court will enter a minute order.

32. 18-23983-B-13 JPJ-3
SHARON LOCKETT
Richard L. Jare
OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM NUMBER 10
4-5-19 [67]

Final Ruling

The case was dismissed on May 7, 2019. Therefore, the objection is dismissed as moot.

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

The court will enter a minute order.

33. 19-22686-B-13 JESSE NIESEN MOTION TO EXTEND AUTOMATIC STAY
MS-1 Mark Shmorgon 5-2-19 [11]

Tentative Ruling

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 25, 2019, due to Debtor's failure to provide a legal source of income to fund his Chapter 13 plan (case no. 18-27989, dkt. 93). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

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

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

The Debtor states that his circumstances have changed because he has reworked his plan and budget. The Declaration of Jesse Niesen states that his plan is a 100% plan, his real property is over-secured with substantial equity for the secured creditor, he has very little unsecured debt, no creditors in the prior bankruptcy sought a motion for relief from stay, and he has proof of various leases and contracts to document sources of income. *See* dkt. 14.

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

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

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

The court will enter a minute order.

34. 18-24988-B-13 CLYDE/SUSAN WILSON MOTION TO MODIFY PLAN
WW-2 Mark A. Wolff 4-16-19 [25]

Final Ruling

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed a new modified plan on May 17, 2019. The confirmation hearing for the modified plan is scheduled for June 18, 2019. The earlier plan filed April 16, 2019, is not confirmed.

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

The court will enter a minute order.

35. 12-31689-B-13 DAWN HASKINS
MWB-7 Mark W. Briden

MOTION TO AVOID LIEN OF CITIBANK, N.A.
4-17-19 [132]

Final Ruling

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

The court's decision is to grant the motion to avoid judicial lien.

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

A judgment was entered against Debtor in favor of Creditor in the amount of $3,281.82. An abstract of judgment was recorded with Shasta County on October 28, 2011, which encumbers the Property. All other liens recorded against the Property total $118,147.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $111,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $0.00 on Schedule C. Dkt. 1.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

36. 19-21592-B-13 VIRGIL EVANS
Thru #37 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING, LLC AND/OR MOTION TO DISMISS CASE
4-30-19 [40]

Final Ruling

The case was dismissed on May 8, 2019. Therefore, the objection is dismissed as moot.

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

The court will enter a minute order.

37. 19-21592-B-13 VIRGIL EVANS
JPJ-02 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-1-19 [36]

Final Ruling

The case was dismissed on May 8, 2019. Therefore, the objection is dismissed as moot.

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

The court will enter a minute order.

38. 19-20293-B-13 ROLINA BROWN
PGM-2 Peter G. Macalus

MOTION TO CONFIRM PLAN
4-16-19 [44]

No Ruling

39. 18-23795-B-13 DENNIS GARRETT
BB-13 Bonnie Baker
Thru #41

MOTION TO APPROVE LOAN MODIFICATION
4-1-19 [203]

No Ruling

40. 18-23795-B-13 DENNIS GARRETT
BB-14 Bonnie Baker

MOTION TO CONFIRM PLAN
4-9-19 [208]

No Ruling

41. 18-23795-B-13 DENNIS GARRETT
BB-15 Bonnie Baker

MOTION FOR COMPENSATION FOR BONNIE BAKER, DEBTOR'S ATTORNEY
5-3-19 [215]

Final Ruling

The motion was brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, a motion seeking compensation that exceeds $1,000.00 must provide at least 21 days' notice per Bankruptcy Rule 2002(a)(6). This motion seeks $39,000.00 in attorney's fees and only 18 days' notice was provided. Therefore, the motion is denied without prejudice.

The court will enter a minute order.

42.	19-20995-B-13 SBT-4	RUDY GONZALEZ, AND ROBERTA GONZALEZ Susan B. Terrado	MOTION TO VALUE COLLATERAL OF GM FINANCIAL 4-24-19 [44]

Tentative Ruling

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

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

Debtors' motion to value the secured claim of GM Financial ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of a 2008 Toyota Camry ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 11-1 filed by AmeriCredit Financial Services, Inc. dba GM Financial is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on a Kelley Blue Book value but this is a third party industry source and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803.

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will enter a minute order.

43.	18-27397-B-13 JPJ-2	GENE/JANICE GEIGER Bruce Charles Dwiggins	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 4-12-19 [25]

No Ruling

44. 19-22839-B-13 RAYMOND/CAROLE CLOUTIER — MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella — O.S.T.
5-9-19 [8]

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors voluntarily dismissed their case on November 15, 2018 (case no. 18-21251, dkt. 21). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C). In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors state that they dismissed their previous case because they needed to address a pending foreclosure of their El Sobrante property, into which they intended to move, while they were attempting to sell their primary residence in Vacaville. The sale of the Vacaville property was to pay off the balance of the El Sobrante property mortgage, which was only $45,000.00. Because the Vacaville property with 41 acres proved difficult to sell and the lender on the El Sobrante property was commencing foreclosure proceedings, the Debtors dismissed their previous case to address the foreclosure. The Debtors were able to obtain financing to pay off the loan on the El Sobrante property and take out additional funds to make necessary repairs to the Vacaville property to get it in better condition to sell. The Debtors state their circumstances have changed since the issues surrounding the El Sobrante property are resolved and they can move forward with the necessary work and marketing of their Vacaville property for sale.

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

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

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

The court will enter a minute order.

45.	19-21114-B-13 TGM-1	LYNDA STOVALL Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON 3-25-19 [20]

No Ruling

46. 19-21541-B-13 WENDY/CHUCK STIEDE
JPJ-1 David P. Ritzinger

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-24-19 [21]

Tentative Ruling

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

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

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

Second, the meeting of creditors was held open and continued to May 16, 2019, to give Debtors additional time to file their 2014 and 2015 income tax returns. The meeting of creditors was held and concluded as to the Debtors.

Third, feasibility depends on the granting of a motion to value collateral for Carmax Auto Finance. No motion to value has been filed, set for hearing, or served on the respondent creditor and Trustee pursuant to Local Bankr. R. 3015-1(I).

The plan filed March 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

47. 19-21747-B-13 ARACELY RIVAS
JPJ-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-25-19 [32]

Tentative Ruling

This matter was continued from May 14, 2017. The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, feasibility depends on the motions to value collateral of Title Max and Wells Fargo Dealer Services. Those matters were heard on May 7, 2019, and granted.

Second, the Debtor has failed to amend Schedule I and J to reflect that she no longer works for American Income Insurance Union and instead has new employment as a translator. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

For the second reasons stated above, the plan filed March 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.

48.	19-20354-B-13 RLC-1 **See Also #20**	ERIC BENSON AND KARRI O'DONNELL Stephen M. Reynolds	CONTINUED MOTION TO CONFIRM PLAN 3-27-19 [46]

No Ruling

49.	18-25574-B-13 MET-2	KAY MILLER Mary Ellen Terranella	CONTINUED MOTION TO MODIFY PLAN 3-31-19 [32]

No Ruling

50. 19-21681-B-13 JPJ-1 — MICHELLE SWIFT, Peter G. Macaluso — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 4-25-19 [16]

Tentative Ruling

This matter was continued from May 14, 2019. The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor has failed to amend her Schedules I, J, and petition as requested by the Trustee to reflect that she has new employment in the state of Texas and has moved there to work. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed March 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.