

**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: June 11, 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

June 11, 2019 at 1:00 p.m.

1. [19-22300](#)-B-13 LESLIE SAWYER OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Douglas P. Broomell PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[22](#)]

Tentative Ruling

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on May 20, 2019. The confirmation hearing for the amended plan is scheduled for July 2, 2019. The earlier plan filed April 12, 2019, is not confirmed.

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

The court will enter a minute order.

June 11, 2019 at 1:00 p.m.

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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 and authorize the Debtor to incur post-petition debt.

The motion seeks permission to obtain a loan to purchase a new home, the total purchase price of which is \$488,000.00, with monthly payments of \$3,234.80, which includes principal, interest, hazard insurance, real estate taxes, and mortgage insurance. The fixed interest rate is 4.125% for a 30-year period. Debtor states that the loan is in his best interest because it will allow him to purchase the home now that his prior home has sold. Debtor's Chapter 13 plan is already complete, Debtor no longer needs to make any plan payments, but waiting until this Chapter 13 closes to purchase the home may result in the risk of losing the home. Because of this, the Debtor has filed this motion to incur debt.

Discussion

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.

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

The court will enter a minute order.

3. [19-22409](#)-B-13 CHARLES/GENNA KRONSCABEL OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 David P. Ritzinger PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[20](#)]

Tentative Ruling

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

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

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes an expense that exceeds the Internal Revenue Service standards. The Debtors claim an expense of \$175.00 under Line #43 for "W's extraordinary work commute - 80 miles per day." The Debtor may claim an allowance only for the specified sum, rather than her real expenditures. *Ransom v FIA Card Servs., N.A.*, 131 S. Ct. 716 (U.S. 2011). The Trustee calculates that the Debtor's correct monthly disposable income is \$556.88 and the Debtors must pay no less than \$33,412.80 to general unsecured creditors. The plan pays only \$19,109.23 to Class 7 general unsecured creditors.

The plan filed April 17, 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 Debtors have 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.

4. [19-22213](#)-B-13 MONICA AVALOS
[JPJ](#)-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[14](#)]

Tentative Ruling

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

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

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

The plan filed April 9, 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.

5. [18-21614](#)-B-13 WILLIAM/SHANNON CROSSON MOTION TO MODIFY PLAN
[MET-1](#) Mary Ellen Terranella 4-25-19 [[26](#)]

Final Ruling

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

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

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

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

The court will enter a minute order.

DEBTOR DISMISSED:
05/20/2019
BALBOA, LLC 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.

Balboa, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1367 Rowena Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Jack Cohen to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Cohen Declaration states that Movant accelerated its loan to the Debtor after the Debtor defaulted multiple times and failed to make the necessary monthly payments. Pursuant to the loan agreement and Movant's acceleration of the loan, the entire balance of the loan became fully due and payable upon these events of default.

On or about April 17, 2019, just six days after Movant recorded its Notice of Trustee's Sale, Debtor filed his first Chapter 13 bankruptcy case (no. 19-22373). See Declaration of Amy Martinez, p. 2, ¶ 3). Debtor did not file any schedules, proposed Chapter 13 Plan, or any other required case commencement documents with the petition. However, the petition listed the Property as Debtor's primary residence, despite the fact that Debtor does not live at the Property and uses it solely as an investment. Martinez Decl., p. 2, ¶ 4. This case was dismissed on or about April 29, 2019, for failure to timely file necessary documents.

On or about May 7, 2019, two days before the trustee's sale, Debtor filed the instant Chapter 13 bankruptcy case. Movant was unaware that Debtor had filed another bankruptcy and had not received notice that the instant petition was filed. Therefore, Movant held its trustee's sale on May 9, 2019.

Debtor's instant Chapter 13 bankruptcy case was dismissed on May 20, 2019, for failure to timely file documents.

Discussion

Relief Pursuant to § 362(d)(1)

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).

Relief Pursuant to § 362(d)(4)

Additionally, 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 has filed bankruptcy a total of two times. In each of the two bankruptcies, Debtor's case was dismissed for failure to timely file documents within two weeks of the bankruptcy petition. Both of these bankruptcy cases were also filed either immediately after Movant recorded its Notice of Trustee's Sale or two days before Movant's trustee's sale. 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.

Retroactive Relief from the Stay

Finally, "section 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay . . ." *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

The court should examine the circumstances of the specific case and balance the equities of the parties' respective positions, using several factors, including: (1) The debtor's overall good faith; (2) Whether creditors knew of the stay but nonetheless took action, thus compounding the problem; (3) Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (4) Whether annulment of the stay will cause irreparable injury to the debtor; and (5) Whether stay relief will promote judicial economy or other efficiencies. *In re Gasprom, Inc.*, 500 B.R. 598, 607 (9th Cir. B.A.P. 2013), adopting factors listed in *In re Fjeldsted*, 293 B.R. 12, 25 (9th Cir. B.A.P. 2003); see also *Cruz*, 516 B.R. at 603.

Movant proceeded with holding the trustee's sale since it has no knowledge that Debtor had filed for bankruptcy. Movant would have been entitled to seek relief from the automatic stay had it known of the bankruptcy case. Movant was not informed of the bankruptcy until five days after the foreclosure sale had been conducted. A third party, Stutz Law Firm, allegedly sent a fax and left a voice mail with Alejandra Fregoso at Geraci Law Firm, but Ms. Fregoso stated that she never received any voice message from anyone regarding a bankruptcy filing by the Debtor and was unaware of the pending bankruptcy. Once Movant learned of the instant bankruptcy filing, Movant then immediately retained counsel and brought the instant Motion for Relief from Stay and Annulment of Stay. Movant has not taken any other steps to pursue a transfer of title to the Property, including recording the Trustee's Deed Upon Sale. Based on the totality of the circumstances, the court finds that the factors discussed are dispositive on whether to grant retroactive relief from stay. Retroactive stay relief will be granted to the date of the petition.

Conclusion

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.

Since the Property is not the Debtor's residence, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

7. [19-22021](#)-B-13 NORMAN COATES
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
5-22-19 [[21](#)]

CASE DISMISSED: 5/29/19

Final Ruling

The case was dismissed on May 29, 2019. The objection to confirmation and motion to dismiss case are overruled and denied as moot, respectively.

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

The court will enter a minute order.

8. [18-24424](#)-B-13 SULLAY DIN GABISI
[RDW](#)-1 Ronald W. Holland

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
4-25-19 [[68](#)]

RICHARD W. ORSER LIVING
TRUST VS.

No Ruling

9. [18-26025](#)-B-13 SUSANA RAMIREZ
[MMM-1](#) Mohammad M. Mokarram

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 9
4-30-19 [[18](#)]

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. 9 of LVNV Funding LLC and the claim is disallowed in its entirety.

Susana Ramirez ("Objector") requests that the court disallow the claim of LVNV Funding LLC ("Creditor"), Claim No. 9. The claim is asserted to be in the amount of \$12,561.21. 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 April 26, 2013, which is more than four years prior to the filing of this case. This is the date supported by Claim No. 5 filed in Debtor's prior case, no. 16-25748. Hence, when the case was filed on September 24, 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.

Final Ruling

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

The court will enter a minute order.

11. [19-22132](#)-B-13 TAGE CRADDOCK AND SHANNON MOTION TO CONFIRM PLAN
[FF-2](#) CAREY 5-1-19 [[24](#)]
Gary Ray Fraley

No Ruling

12. [19-22234](#)-B-13 BRADLEY NYDEGGER
[CCR-1](#) Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY PATTERSON DENTAL
SUPPLY, INC.
5-23-19 [[14](#)]

No Ruling

13. [19-22435](#)-B-13 RONDA HARRIS
[AP-1](#) Gerald B. Glazer

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
5-21-19 [[15](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim. The creditor objects to confirmation on grounds that the Debtor's plan does not provide for the correct post-petition payment amount owed to the creditor and Debtor's under estimation of the initial post-petition payment will cause a feasibility issue. The plan cannot be confirmed since the Debtor will not be able to make all payments under the plan and to comply with the plan. 11 U.S.C. § 1325(a)(6).

The plan filed April 18, 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.

14. [17-26836](#)-B-13 BERNADETTE TEDING
[RJ-3](#) Richard L. Jare

MOTION TO MODIFY PLAN
5-3-19 [[53](#)]

No Ruling

15. [18-24937](#)-B-7 JOHN HUGHES
[JPJ](#)-3 Peter L. Cianchetta

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1-1
4-15-19 [[51](#)]

CASE CONVERTED: 04/25/2019

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, I, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Cavalry SPV, I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$7,823.56. 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 February 25, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 6, 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.

16. [18-24642](#)-B-13 BRADLEY/SARAH PARSONS
[JPJ](#)-1 Mikalah R. Liviakis

OBJECTION TO CLAIM OF GOLDEN 1
CREDIT UNION, CLAIM NUMBER 3
4-15-19 [[18](#)]

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. 3 of Golden 1 Credit Union and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Golden 1 Credit Union ("Creditor"), Claim No. 3. The claim is asserted to be in the amount of \$3,974.39. Objector asserts that the claim fails to include required information that applies to an open-end or revolving consumer credit agreement pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). The statement requires: the name of the entity from whom the creditor purchased the account; the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; the date of an account holder's last transaction; the date of the last payment on the account; and the date on which the account was charged to profit and loss.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim fails to include the required information pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

17. [19-21842](#)-B-13 MARIANN HANNON-CHAPMAN MOTION TO CONFIRM PLAN
[FF-2](#) AND PAUL CHAPMAN 5-3-19 [[26](#)]
Gary Ray Fraley

Final Ruling

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

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

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

The court will enter a minute order.

18. [18-27747](#)-B-13 VIRGINIA HUNT
[SLE](#)-2 Steele Lanphier

MOTION TO CONFIRM PLAN
5-2-19 [[35](#)]

No Ruling

19. [15-28948](#)-B-13 RICHARD/GERINE CAYLOR MOTION TO INCUR DEBT
[JSC](#)-9 Jeffrey S. Ogilvie 5-9-19 [[126](#)]

No Ruling

20. [19-22260](#)-B-13 RANDALL HERNANDEZ
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[17](#)]

Tentative Ruling

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

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

The plan will take approximately 77 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed April 11, 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.

21. [19-21864](#)-B-13 IMELDA DEL ROSARIO
[JPJ](#)-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-15-19 [[32](#)]

Tentative Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). Consequently, 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 objection.

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

The Trustee objects to the Debtor's use of the California exemptions as improper.

First, the Debtor has claimed her interest in a vehicle and jewelry under California Code of Civil Procedure § 704.020. The Debtor is not entitled to claim her interest in these items under this exemption. This exemption is limited to household goods and clothing. The vehicle and jewelry do not meet the definition of furnishings, appliances, provisions, and clothes under the Household Good Clothing Code.

Second, the Debtor has chosen to exempt the equity in her real property under California Code of Civil Procedure § 704.730. This exemption allows a debtor to exempt equity in a principal place of residence in the total amount of \$100,000.00. According to Debtor's Schedule C filed on April 10, 2019, the Debtor has claimed real property as exempt under § 704.730 in the amount of \$468,000.00, which exceeds the maximum amount allowed of \$100,000.00. The Debtor cannot claim the exemption in the amount of \$468,000.00.

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

The objection is ORDERED SUSTAINED and the claimed exemption/s DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Final Ruling

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

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

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

The court will enter a minute order.

23. [18-25574](#)-B-13 KAY MILLER
[JPJ](#)-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 5
4-15-19 [[43](#)]

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. 5-1 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. 5-1. The claim is asserted to be in the amount of \$1,422.98. 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 14, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 1, 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.

24. [18-25077](#)-B-13 PATRICIA HAMMOND
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 13
4-15-19 [[19](#)]

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. 13-1 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. 13-1. The claim is asserted to be in the amount of \$929.94. 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 February 8, 2002, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 13, 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.

WASHINGTON FEDERAL VS.

Final Ruling

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

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

Washington Federal ("Movant") seeks relief from the automatic stay with respect to real property under two separate loans, a long-term loan and a short-term loan. The total amount owing on the long-term loan ("Loan #1") is \$604,200.49, plus interest, attorney's fees, and other costs. The loan is fully secured by real property valued at \$840,000.00. A Notice of Default for Loan #1 was recorded on September 10, 2018, with the Modoc County Recorder's Office. The total amount owing on the short-term loan ("Loan #2") is \$12,320.04, plus interest, attorney's fees, and other costs. The loan is fully secured by real property valued at \$27,000.00. As of April 15, 2019, the entirety of Loan #2 was due and owing.

Movant has provided the Declaration of John Vandenberg to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by the property for Loan #1 is determined to be \$773,360.66 and Debtor's equity is \$66,639.34 as stated in Movant's exhibits. The value of the property for Loan #1 is determined to be \$840,000.00 as stated in Movant's exhibits. The total debt secured by the property for Loan #2 is determined to be \$51,480.21 as stated in Movant's exhibits. The value of the property for Loan #2 is determined to be \$27,000.00 as stated in Movant's exhibits.

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 little equity in the property under Loan #1 and no equity in the property under Loan #2. 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).

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.

Since the property is not the Debtor's residence, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

26. [19-21385](#)-B-13 RICHARD/MONICA VINEY MOTION TO CONFIRM PLAN
[MMM-1](#) Mohammad M. Mokarram 5-13-19 [[18](#)]

Final Ruling

The motion has not been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 29 days' of notice was given. The motion 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.

27. [18-27288](#)-B-13 ROBERT/ALLISON KING
[JHW](#)-1 Thomas L. Amberg

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-13-19 [[35](#)]

CAB WEST, 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 grant the motion for relief from stay.

Cab West, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford Escape (the "Vehicle"). The moving party has provided the Declaration of Jacklyn Larson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Larson Declaration provides testimony that Debtor is currently in default for post-petition payments due February 29, 2019, through April 29, 2019, in the amount of \$386.63 plus fees and costs for a total delinquency of \$1,353.87. The Vehicle is a lease.

Response by Debtors

Debtors have filed a response stating their non-opposition to the motion.

Discussion

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

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

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

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

28. [18-25494](#)-B-13 NICHOLAS/REBECCA
[JPJ](#)-1 HENDRICKS
Pauldeep Bains

OBJECTION TO CLAIM OF ATLAS
ACQUISITIONS, LLC, CLAIM NUMBER
12-1
4-15-19 [[28](#)]

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. 12-1 of Atlas Acquisitions, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Atlas Acquisitions, LLC ("Creditor"), Claim No. 12-1. The claim is asserted to be in the amount of \$1,196.75. 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 charge off date was August 12, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 30, 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.

29. [19-22195](#)-B-13 JASON MARCO
[JPJ](#)-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
5-22-19 [[18](#)]

Tentative Ruling

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

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

First, the Debtor did not appear at the meeting of creditors set for May 16, 2019, as required pursuant to 11 U.S.C. § 343.

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

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

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

The plan filed April 9, 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. [19-22396](#)-B-13 RUMMY SANDHU OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[20](#)]

CONTINUED TO 7/02/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO
AVOID LIEN.

Final Ruling

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

31. [19-22297](#)-B-13 ABEL RUSFELDT
[GB-1](#) W. Steven Shumway

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-8-19 [[18](#)]

CERTIS PN 1, LLC VS.

Tentative Ruling

Introduction

Certis PN 1, LLC ("Certis") moves for relief from the automatic stay of 11 U.S.C. § 362(a) pursuant to §§ 362(d)(1) and 362(d)(4) and from any applicable co-debtor stay pursuant to § 1301. Certis asserts that Debtor Abel Rusfeldt ("Debtor") is not the original borrower, does not have an interest in the real property located at 5408 Iron Point Court, Rocklin, CA (the "Property"), transferred an interest in the Property to hinder, delay, or defraud Certis, and has filed multiple bankruptcy cases affecting the Property for the same reason.

The Debtor opposes the motion. The Debtor asserts that he has an interest in the Property, which was granted to him in 2005 from his wife. He further asserts that a purported grant deed to third person named Robert E. Aguirre-Perez is a forgery and that the Property is necessary for him, his wife, and their children to live.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court also takes judicial notice of docket in this Chapter 13 case and in the Debtor's prior Chapter 13 case, case no. 17-22866, filed on April 28, 2017, and dismissed on January 13, 2019. 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, the court's decision is to deny the motion as moot as it pertains to the automatic stay and grant the motion as it pertains to any co-debtor stay.

Discussion

Automatic Stay

This is the Debtor's second Chapter 13 case within a one year period. This case was filed on April 12, 2019. The Debtor's prior Chapter 13 case, case no. 17-22866, was dismissed on January 13, 2019. The Debtor has therefore had one prior case that was pending and dismissed within year preceding the filing of this current case.

In the absence of a noticed motion to extend the automatic stay and a hearing completed within 30 days of the petition date in the second case, 11 U.S.C. § 362(c)(3)(B), the automatic stay of § 362(a) terminates on the 30th day after the petition that commenced the second case is filed. 11 U.S.C. § 362(c)(3)(A).

No motion to extend the automatic stay was filed and heard in this case within the applicable 30-day period. Since more than 30 days from the April 12, 2019, petition date of this second Chapter 13 case have now passed not only may the automatic stay not be extended because no motion to extend can be timely noticed and completed, but the automatic stay terminated in its entirety, *i.e.*, as to all parties in interest and for all purposes, on the 30th day after the petition that commenced this second Chapter 13 case was filed. *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011); see also *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018) (adopting and applying *Reswick's* analysis).

This court has made clear on a number of occasions that it follows *Reswick*. Notably, the bankruptcy appellate panel continues to adhere to *Reswick*. *Fareed Sepehry-Fard v. U.S. Bank, N.A. (In re Sepehry-Fard)*, 2018 WL 2709718, *4 (9th Cir. BAP 2018); *Ortola v. Ortola (In re Ortola)*, 2011 WL 7145793 (9th Cir. BAP 2011). At least two district courts in the Ninth Circuit, including our own, have applied *Reswick*. *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509-510 (N.D. Cal. 2016); *Vassallo v. Naiman*, 2012 WL 691783, *2 (E.D. Cal. 2012). So too have at least five bankruptcy courts within the

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Ninth Circuit. *In re Bishop*, 2017 WL 1788412, *1 (Bankr. C.D. Cal. 2017); *In re Wilson*, 2016 WL 3751620, *3 n.6 (Bankr. E.D. Wa. 2016); *In re Whitescorn*, 2013 WL 1121393, *2 (Bankr. D. Or. 2013); *In re Smith*, 481 B.R. 633, 636 n.4 (Bankr. D. Nev. 2012); *In re Jackola*, 2011 WL 2518930, *3 (Bankr. D. Haw. 2011). There is also one recent convert to *Reswick*. *In re Goodrich*, 587 B.R. 829 (Bankr. Vt. 2018).

In any case, because there presently is no longer is an automatic stay in effect under § 362(a), it having terminated in its entirety by operation of law, there is nothing for the court to grant Certis relief from under §§ 362(d)(1) and/or 362(d)(4).¹ Certis' request for relief from the automatic stay is moot and will be denied as such.

Co-Debtor Stay

Certis also requests relief from any applicable co-debtor stay, if any, apparently because of the aforementioned questionable transfer of an interest in the Property. The Debtor's opposition is limited to Certis' request for relief from the automatic stay. See dkt. 27 at 1:15. In other words, the Debtor did not oppose Certis' request for relief from the co-debtor stay. Inasmuch as the Debtor also asserts that the aforementioned grant deed purporting to transfer an interest in the Property is forged, the Debtor effectively asserts there is no co-debtor to stay. The purported co-debtor also did not file any opposition to the motion. Therefore, as to a co-debtor stay, if any, the motion will be granted and any applicable co-debtor stay will be terminated in its entirety.

Conclusion

For the foregoing reasons, the motion for relief from the automatic stay of § 362(a) is denied as moot, the motion for relief from the co-debtor stay of § 1301 is granted, and all other relief including any request for attorney's fees is denied without prejudice.

The motion is ORDERED DENIED AS MOOT as to relief from the automatic stay of § 362(a), ORDERED GRANTED as to relief from the co-debtor stay of § 1301, and ORDERED DENIED WITHOUT PREJUDICE as to all other relief including any request for attorney's fees for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

¹The court is not persuaded that relief under § 362(d)(4) is warranted in this case. The Debtor concedes that the grant deed purporting to transfer an interest in the Property is forged. A forged grant deed does not reflect an intent to hinder, delay, or defraud

32. [19-21999](#)-B-13 CRAIG MACEY MOTION TO CONFIRM PLAN
[MJD](#)-3 Matthew J. DeCaminada 5-6-19 [[49](#)]
Thru #33

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 June 3, 2019. The confirmation hearing for the amended plan is scheduled for July 9, 2019. The earlier plan filed April 4, 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.

33. [19-21999](#)-B-13 CRAIG MACEY MOTION TO AVOID LIEN OF
[MJD](#)-4 Matthew J. DeCaminada TIDEWATER FINANCE COMPANY
5-23-19 [[56](#)]

Tentative Ruling

Introduction

Before the court is a motion by Debtor Craig Macey ("Debtor") to avoid a lien created by a wage earnings order held by Tidewater Finance Company ("Tidewater"). The motion is brought pursuant to 11 U.S.C. § 522(f)(1) which allows a debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is- a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5) [.]” 11 U.S.C. § 522(f)(1)(A).

The court has reviewed the motion and all related documents. The court also 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, the court's decision is to deny the motion without prejudice.

Background

Before the petition was filed, the Sacramento County Sheriff ("Sheriff") collected \$1,357.32 of the Debtor's wages for Tidewater's benefit pursuant to a wage earnings order. The Sheriff is currently holding those funds.

After the petition was filed, the Debtor filed an amended Schedule C claiming the funds collected prepetition by the Sheriff exempt under § 703.140(b)(5). The Debtor now seeks to avoid Tidewater's lien on the garnished funds on the basis the lien impairs his exemption and to recover the funds from the Sheriff. See Dkt. 56 at 2:3-4.

Discussion

The motion is not opposed. However, the Debtor still "bears the burden of proof by a preponderance of the evidence on every element of § 522(f)." *In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009); see also *Reynolds v. Swedelius (In re Reynolds)*, 2006 WL 6811035 at *8 (9th Cir. BAP 2006). Thus, even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief on the Debtor's motion unless the Debtor has established a prima facie basis for the relief sought. *In re Schneider*, 2013 WL 5979756 at *3 (Bankr. E.D.N.Y. 2013). The Debtor has not met his burden.

The Ninth Circuit bankruptcy appellate panel has summarized and restated the statutory requirements to avoid a judicial lien under § 522(f) as follows: (1) an exemption to which the debtor is entitled; (2) an exemption listed and claimed on the schedules; (3) a lien that impairs the exemption; and (4) the lien must be a judicial lien. *Green v. Hapo Community Credit Union (In re Green)*, 2013 WL 4055846 at *4 (9th Cir. BAP 2013) (internal citations omitted, emphasis added) (citing *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (9th Cir. BAP 2003)).

The Debtor has not established the funds held by the Sheriff are exempt. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329 (9th Cir. BAP 2016) (debtor bears the burden of proof on a California exemption). Before a debtor may claim property as exempt and thereby remove it from the estate, the property claimed as exempt must first come into the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713, 725 (9th Cir. BAP 2012). Here, that means the funds the Sheriff garnished and holds must be property of the estate which, in turn, requires the Debtor to establish some legal or equitable interest in those funds.

Whether a prepetition levy or garnishment of funds transfers ownership for purposes of determining if the funds are property of the estate is determined on a case-by-case basis. *Id.* at 723. In the case of funds garnished prepetition under a California wage earnings order, such funds may be property of the estate and thereby exempted from it only if the debtor could have challenged the garnishment in the state court prepetition. *In re Solarzano*, 2013 WL 1701749, *1 (Bankr. S.D. Cal. 2013). The Debtor has not made that showing. And in that regard, the Debtor has not demonstrated that the garnished funds in the Sheriff's possession came into the estate so as to be exempted from it.

The bigger problem, however, is that there is no lien on the funds held by the Sheriff to avoid under § 522(f)(1). Like here, the debtor in *Solarzano, supra*, sought to avoid, under § 522(f)(1), a lien on his wages created by a wage earnings order and to recover funds that the county sheriff garnished prepetition and held postpetition. *Solarzano*, 2013 WL 1701749 at *1. Assuming that the garnished funds were property of the estate and could be exempted, the bankruptcy court in *Solarzano* held that there was no lien to avoid because under Cal. Civ. Code P. § 706.029 the lien created by the wage earnings order expired when the withholdings were paid out to the county sheriff. *Id.* The same applies here: Even assuming that the garnished funds held by the Sheriff are property of the estate, any lien on those funds created by Tidewater's wage earnings order expired when the funds were paid out to the Sheriff for Tidewater's benefit.

Conclusion

For the foregoing reasons, Debtor's motion to avoid Tidewater's lien is denied without prejudice.

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

The court will enter a minute order.

34. [19-22099](#)-B-13 ELDRIDGE JACKSON
[JPJ](#)-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-22-19 [[22](#)]

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 conditionally deny the motion to dismiss.

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, feasibility depends on the granting of a motion to value collateral for Chrysler Capital. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(I).

Third, the Debtor has failed to amend Schedule A/B to add his 2015 Freightliner and to amend his Statement of Financial Affairs to include 2019 tax levies by the Franchise Tax Board as requested by the Trustee. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed April 17, 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.