

**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 18, 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 18, 2019 at 1:00 p.m.

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1. [18-26104](#)-B-13 VERNON/JAMIE JIMMERSON MOTION TO CONFIRM PLAN
[FF-5](#) Gary Ray Fraley 5-10-19 [[80](#)]

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 filed May 7, 2019, 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.

June 18, 2019 at 1:00 p.m.

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.

The plan will take approximately 71 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 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.

3. [18-23710](#)-B-13 DAVID/EMILINDA VERA
[JJC](#)-5 Julius J. Cherry

MOTION TO CONFIRM PLAN
4-29-19 [[117](#)]

No Ruling

4. [19-21010](#)-B-13 CLARENCE COOK
[JPJ](#)-3 John G. Downing

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-14-19 [[47](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (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 sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.730 on amended Schedule C filed April 17, 2019, to claim his interest in rental property located at 227-229 North 6th Street, San Jose, California, since he testified at the meeting of creditors that he has not resided there since 2010. The Debtor also claimed his interest in the family dog, cash, six bank accounts, and Tesla stock as exempt under California Code of Civil Procedure § 704.730 on amended Schedule C filed April 17, 2019.

The Debtor is not entitled to claim his interest in any of the above property as exempt under California Code of Civil Procedure § 704.730 since none of this property was the Debtor's primary residence on the date the petition was filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The objection is ORDERED SUSTAINED and the claimed exemption 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.

6. [16-25118](#)-B-13 RICHARD CHASTAIN
[JPJ](#)-4 David P. Ritzinger

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
5-16-19 [[105](#)]

No Ruling

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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan 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 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.

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.

9. [18-25840](#)-B-13 SHAVINA THOMAS
[VC-1](#) Richard L. Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-22-19 [[46](#)]

REGIONAL ACCEPTANCE
CORPORATION 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.

Regional Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Dodge Journey (the "Vehicle"). The moving party has provided the Declaration of Christina Wilson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wilson Declaration provides testimony that Debtor has not made post-petition payments since January 5, 2019, in the sum of \$397.03 per month. As of May 22, 2018, this amounted to \$1,985.15 in post-petition default.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$18,350.76 while the value of the Vehicle is determined to be \$13,775.00 as stated in the Wilson 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 since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

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

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

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.

10. [19-21640](#)-B-13 DEBORA MILLER-ZURANICH CONTINUED MOTION TO DISMISS
[JPJ](#)-1 Peter L. Cianchetta CASE
5-6-19 [[35](#)]

No Ruling

11. [19-23245](#)-B-13 MARY LE-GRAND-SAWYER
[DSH](#)-2 Dennise S. Henderson

MOTION TO EXTEND AUTOMATIC STAY
6-4-19 [[17](#)]

DEBTOR DISMISSED: 06/05/2019

Final Ruling

The case was dismissed on June 5, 2019. Therefore, the motion to extend automatic stay is denied as moot.

The motion is ORDERED DENIED AS MOOT 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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan 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.

13. [19-21346](#)-B-13 CHARLES KOCH
[MOH](#)-1 Michael O'Dowd Hays

CONTINUED MOTION TO CONFIRM
PLAN
4-16-19 [[29](#)]

No Ruling

14. [19-22046](#)-B-13 DEBORAH ARNOLD
[CJO](#)-1 George T. Burke

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LAND
HOME FINANCIAL SERVICES, INC.
5-7-19 [[15](#)]

Tentative Ruling

Deborah Arnold ("Debtor") and Land Home Financial Services, Inc. ("Creditor") entered into a stipulation on June 13, 2019. Subject to approval of the stipulation, Creditor withdraws its objection.

There being no other objection to confirmation, the plan filed April 2, 2019, will be confirmed.

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

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

The court will enter a minute order.

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.

Debtor seeks court approval to incur post-petition credit. Sun West Mortgage Company, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$3,145.00 a month as stated in the plan filed October 12, 2018, to \$2,515.61 a month. Under the terms of the modified loan, the loan amount will be \$331,635.93, the new maturity date is May 1, 2049, the new monthly payment is \$2,515.61 beginning June 1, 2019, and the interest rate will remain at 4.875%.

The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

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

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

The court will enter a minute order.

Final Ruling

The motion has been set for hearing on the 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 filed May 6, 2019, 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.

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.

18. [18-24853](#)-B-13 RAFAEL/MARSHA ESPINOSA
[JPJ](#)-3 Yasha Rahimzadeh

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 OR IN
THE ALTERNATIVE DISMISS CASE
5-16-19 [[75](#)]

No Ruling

19. [18-27165](#)-B-13 EDWARD HOILMAN AND LISA MOTION TO MODIFY PLAN
[BLG](#)-1 MCCURRY-HOILMAN 4-25-19 [[40](#)]
Chad M. Johnson

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.

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.

21. [18-26670](#)-B-13 ROBERT/DOROTHY RUSSO
[MJ-1](#) George T. Burke

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-8-19 [[50](#)]

WELLS FARGO BANK, N.A. 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.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4826 Calle De Oro, Oakley, California (the "Property"). Movant has provided the Declaration of Kerissa Blanks to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Blanks Declaration states that there are 13 pre-petition payments in default, with a total of \$37,591.25 in pre-petition payments past due.

While the motion states that the Debtors intend to surrender the Property, Movant's exhibits show that the plan provides for the Movant's claim in Class 1.

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 \$857,306.29 as supported by the Blanks Declaration and supporting documents filed. The value of the Property is determined to be \$750,000.00 as stated in Schedules A and D filed by Debtors.

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 Debtors have 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).

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

Final Ruling

Before the court is a motion by Specialized Loan Servicing, LLC, as servicer for HSBC Bank USA, National Association as Trustee for MortgageIT Securities Corp. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates ("SLS"), for an order confirming that there is no automatic stay in effect as to SLS so that it may commence and/or continue all acts necessary to foreclose under a deed of trust on real property located at 14191 Racine Circle, Magalia, CA 95954 ("Property"). SLS contends it is a Class 3 creditor in a modified plan confirmed by Debtors Stephen and Lesly Sawyer ("Debtors") and therefore any stay terminated upon confirmation of the Debtors' modified plan.

The court has reviewed the motion, which was filed without any declaration or supporting evidence other than the Debtors' modified plan and the order confirming it. Dkt. 108. The court 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 motion will be denied without prejudice.

Discussion

Debtors filed a modified plan on March 7, 2019, dkt. 86, and motion to confirm it on March 8, 2019, dkts. 87-90. The motion was heard and granted on April 23, 2019. Dkts. 101-103. The order confirming the modified plan was entered on May 16, 2019. Dkt. 105.

The modified plan provides for termination, upon confirmation, of the automatic and co-debtor stay(s) as to any Class 3 creditor. See Dkt. 86, p.4, § 3.11. The problem here, however, is that the modified plan lists "Wells Fargo Mortgage" as the sole Class 3 creditor. *Id.* at § 3.09. SLS, as the purported loan servicer for HSBC Bank, has not provided any evidence that it or HSBC have any connection to or authority to act for Wells Fargo Mortgage. In other words, the purported secured creditor requesting relief has not presented any evidence to establish a colorable claim to the Property. The court will not confirm the absence of any stay(s) as to SLS and/or HSBC Bank when the Class 3 creditor identified in the modified plan as the creditor with a lien on the Property is Wells Fargo Mortgage and there is no evidence to establish otherwise.

Conclusion

For the foregoing reasons, SLS's motion to confirm termination of any stay(s) is denied without prejudice. All other relief 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.

23. [19-21876](#)-B-13 SCOTT YODER
[ETW](#)-1 Richard L. Sturdevant
Thru #24

OBJECTION TO CONFIRMATION OF
PLAN BY ROBIN L. WINSLOW AND
TROY S. WINSLOW
5-20-19 [[20](#)]

Final Ruling

Before the court is a document captioned Motion Objecting to Confirmation of Debtor's Chapter 13 Plan filed by Troy S. Wilson and Robin L. Wilson Family Trust Dated 11/15/91 ("Wilson Trust"). Dkt. 20. Although captioned as a "motion" the document is an objection to the "proposed Chapter 13 plan filed on April 15, 2019[.]" *Id.* at 2:3. The plan filed April 15, 2019, is at Docket 13. No other plan has been filed.

Based on an objection to confirmation of the April 15, 2019, plan filed by the Chapter 13 Trustee ("Trustee"), dkt. 15, a hearing was held on June 4, 2019, at which time the court sustained the Trustee's objection and denied confirmation of the plan. Dkts. 36-38. Confirmation of the April 15, 2019, plan having already been denied, the Wilson Trust's objections are moot and are overruled as such.¹

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

The court will enter a minute order.

24. [19-21876](#)-B-13 SCOTT YODER
[ETW](#)-2 Richard L. Sturdevant

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-19 [[25](#)]

TROY WINSLOW 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 deny without prejudice the motion for relief from stay.

The motion is made on the same grounds stated as the objection to confirmation of the April 15, 2019, Chapter 13 plan. Dkt. 25. Inasmuch as the Wilson Trust's objection is moot and has been overruled as such (and appears to lack merit in any case), see Final Ruling on Dkt. 20 at Item #23, the grounds for the relief requested in the Wilson

¹The objection also appears to lack merit. The Wilson Trust contends that the April 15, 2019, plan may not be confirmed because it proposes to modify its claim secured by the Debtor's principal residence which is prohibited by § 1322(b)(2). However, the Wilson Trust's loan to the Debtor matured on December 1, 2018. See Claim 6-1. The Debtor filed this Chapter 13 case on March 27, 2019, so the loan was fully-matured when the petition was filed. In other words, the last payment on the loan is due before a final plan payment. The Debtor may therefore be able to modify the Wilson Trust's secured claim (interest rate included) under § 1322(c)(2) as an exception to § 1322(b)(2).

Trust's motion for relief from the automatic stay no longer exist and/or support the relief requested. The Wilson Trust's motion is therefore 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.

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 not permit the loan modification requested.

Debtor seeks court approval to enter into a trial loan modification. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a trial loan modification that will require Debtor to make 4 payments in the amount of \$1,409.82 beginning May 1, 2019, with the last payment under trial loan modification to be made by July 1, 2019. Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts. Once the loan is modified, the interest rate and monthly P&I will be fixed for the life of the mortgage unless the initial modified interest rate is below current market interest rates

The Declaration of John C. James is filed with this motion. However, the Declaration does not affirm Debtor's desire to obtain the post-petition financing or provide evidence of Debtor's ability to pay this trial loan modification. Instead, the Declaration appears to be in support of a motion to avoid judicial lien of Jean-Pierre Rushing dba Interwest Judgment Recovery.

Because the Debtor provides no evidence of his ability to make the trial loan modification payments, 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.

26. [19-22277](#)-B-13 MARY LE-GRAND-SAWYER
Dennise S. Henderson

MOTION TO CONFIRM PLAN
5-14-19 [[20](#)]

DEBTOR DISMISSED: 05/16/2019

Final Ruling

The case was dismissed on May 16, 2019. Therefore, the motion to confirm 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.

27. [18-24988](#)-B-13 CLYDE/SUSAN WILSON
WW-3 Mark A. Wolff
Thru #28

MOTION TO MODIFY PLAN
5-17-19 [[39](#)]

Tentative Ruling

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

The court's decision is to not permit the requested modification and not confirm the modified plan.

Mark A. Wolff, counsel for the Debtors, has listed attorney fees in the modified plan filed May 17, 2019. These fees must be properly approved by the court pursuant to 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Mr. Wolff had substituted into this case on April 18, 2019. Dkt. 34. The previous attorney was Scott Sagaria, who was authorized attorney fees of \$4,000.00, of which \$1,795.00 was paid prior to the filing of the petition and the balance of \$2,205.00 to be paid through the plan, pursuant to Local Bankr. R. 2016-1(c).

The modified plan does not comply with 11 U.S.C. §§ 1322 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.

28. [18-24988](#)-B-13 CLYDE/SUSAN WILSON
WW-4 Mark A. Wolff

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WOLFF & WOLFF FOR
MARK A. WOLFF, DEBTORS
ATTORNEY(S)
5-17-19 [[43](#)]

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 compensation.

Mark A. Wolff ("Applicant"), the attorney to Chapter 13 Debtors, makes a request for the allowance of \$2,000.00 as a minimum fixed fee to represent Debtors in this case. Applicant states that Debtors and Wolff & Wolff agreed to this payment amount. Applicant had substituted into this case following the passing of Scott Sagaria, who previously represented the Debtors.

Applicant states that the Debtors have paid Wolff & Wolff a sum of \$50.00. Applicant requests that the remaining \$1,950.00 be paid through the Debtors' Chapter 13 plan. The fees are to cover the review of Debtors' case, filing of a modified Chapter 13 plan, regular case maintenance, periodic review of the case, answering of questions, and the normal end-of-case closing processes.

Applicant provides no task billing analysis and supporting evidence of the services provided.

Chapter 13 Trustee Jan P. Johnson ("Trustee") opposes Applicant's request for attorney's fees. The Trustee states that the Debtors' late attorney, Scott Sagaria, has an existing order confirming plan (dkt. 19) authorizing attorney's fees of \$4,000.00, of which \$1,795.00 was paid prior to the filing of the petition and the balance of \$2,205.00 to be paid through the plan, pursuant to Local Bankr. R. 2016-1(c). According to the Trustee, any request for additional fees must be properly approved by the court pursuant to 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Applicant's motion fails to include an itemized billing statement or any other evidence before the court to allow reasonable compensation to the Debtors' attorney for representing the interests of the Debtors, based on a consideration of the benefit and necessity of such services to the Debtors, pursuant to 11 U.S.C. § 330(a)(4)(B).

The court agrees with the Trustee. Applicant has failed to provide any itemization of services rendered or to provide an explanation, such as in the form of a declaration, of the benefit and necessity of his services to the Debtors pursuant to 11 U.S.C. § 330(a)(4)(B). Therefore, 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.

29. [18-23795](#)-B-13 DENNIS GARRETT
[BB](#)-13 Bonnie Baker
Thru #31

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
4-1-19 [[203](#)]

Final Ruling

This Final Ruling applies to Items 29, 30, and 31. The court issues Final Rulings for all three matters because all matters are further continued to July 2, 2019, at 1:00 p.m.

This is also the final continuance of these matters. This case has been pending for over one year without a confirmed plan. The continued failure and/or inability to confirm a plan may result in dismissal or conversion. See 11 U.S.C. § 1307(c)(1), (c)(5).

Items 29 and 30

Permanent loan modification documents were not timely-filed to permit review prior to continued June 18, 2019, hearing. The loan modification agreement filed on June 14, 2019, dkt. 250, is not signed by the lender. To the extent the third amended plan filed by Debtor Dennis Garrett ("Debtor"), dkt. 210, relies on an approved loan modification it cannot be confirmed without evidence of the lender's consent to the modification. Therefore, the continued hearing on the motion to approve loan modification at Calendar Item #29, dkt. 203, and the continued hearing on the motion to confirm the third amended plan at Calendar Item #30, dkt. 208, are further continued to July 2, 2019, at 1:00 p.m.

Fully-executed loan modification documents shall be filed no later than June 25, 2019, to permit sufficient time for the court and the Chapter 13 Trustee ("Trustee") to review.

By June 25, 2019, the Debtor shall also file a supplemental feasibility analysis that addresses whether the proposed monthly plan payment of \$1,886.00 will permit the third amended plan to complete within the requisite 60-month period if, assuming they are approved and allowed, the \$39,000.00 in attorney's fees requested, dkt. 235, are paid through the third amended plan as proposed, dkt. 210 @ § 3.05. The analysis should also take into account the proposed monthly plan payment in relation to the aggregate of payments to be made monthly through the third amended plan, including the Chapter 13 Trustee's compensation. Any further objections to confirmation may be filed by June 25, 2019.

Item 31

The motion for compensation at Calendar Item 31, dkt. 235, is also continued to July 2, 2019, at 1:00 p.m., to be considered with the motion to approve loan modification and motion to confirm the third amended plan.

30. [18-23795](#)-B-13 DENNIS GARRETT
[BB](#)-14 Bonnie Baker

CONTINUED MOTION TO CONFIRM
PLAN
4-9-19 [[208](#)]

Final Ruling

See Final Ruling at Item #29.

31. [18-23795](#)-B-13 DENNIS GARRETT
[BB](#)-16 Bonnie Baker

MOTION FOR COMPENSATION FOR
BONNIE BAKER, DEBTORS
ATTORNEY(S)
5-21-19 [[235](#)]

Final Ruling

See Final Ruling at Item #29.

32. [18-27397](#)-B-13 GENE/JANICE GEIGER CONTINUED MOTION TO CONVERT
[JPJ](#)-2 Bruce Charles DwigginS CASE FROM CHAPTER 13 TO CHAPTER
7, MOTION TO DISMISS CASE
4-12-19 [[25](#)]

No Ruling