UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 19, 2018 at 1:00 p.m.

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1. 18-20400-B-13 IRMA BANUELOS — MOTION TO CONFIRM PLAN
RJ-1 Richard L. Jare — 5-8-18 [25]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on May 8, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

2. 11-43807-B-13 AJESH/REETA KUMAR — MOTION FOR SUMMARY JUDGMENT
17-2143 PGM-1 — 5-17-18 [43]
KUMAR ET AL V. AURORA BANK FSB
ET AL

Final Ruling: No appearance at the June 19, 2018, hearing is required.

Plaintiffs' Motion for Summary Judgment is denied due to notice deficiencies and failure to comply with Local Bankruptcy Rules. Pursuant to Local Bankr. R. 7056-1(a), any motion for summary judgment shall be filed and served at least forty-two (42) days prior to the hearing date. Here, Plaintiffs' Motion was filed and served on May 17, 2018. Adv. 17-2143, dkt. 43, 48. Plaintiffs' noticed hearing on their Motion for June 19, 2018, at 1:00 p.m., fell short of the forty-two (42) days' notice required by Local Bankr. R. 7056(a). Adv. dkt. 44. Plaintiffs provided only thirty-three (33) days' notice. Therefore, Plaintiffs' Motion is denied without prejudice for deficient notice.

The court will enter an appropriate minute order.

3. 18-21113-B-13 TIMOTHY/SHERRIE BENDER — MOTION TO CONFIRM PLAN
RAH-1 Richard A. Hall — 4-20-18 [25]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated April 20, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 20, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

4. 16-23919-B-13 TONI HERRERA — MOTION TO MODIFY PLAN
SLE-4 Steele Lanphier — 5-4-18 [80]

Tentative Ruling: The Motion to Confirm Second Modified Chapter 13 Plan Dated May 4, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan and motion filed on May 4, 2018, were filed twice as a single document as court docket numbers 80 and 83. The plan was not filed as a separate document. The motion does not comply with Local Bankr. R. 3015-1(d).

Second, the plan cannot be effectively administered because it fails to specify any plan payments for months 1-23. Specifically, the plan does not properly account for all payments the Debtor has paid to the Trustee prior to the filing of the modified plan. The Debtor has paid a total of $12,539.25 to the Trustee through month 23.

Third, the terms for payment of Debtor's attorney's fees and other administrative expenses are unclear. Section 3.06 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses though the plan with a monthly payment specified at $0.00.

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

The court will enter an appropriate minute order.

5. 17-24825-B-13 EMMA NERSESYAN MOTION TO MODIFY PLAN
KWS-1 Scott J. Sagaria 5-10-18 [21]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 10, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

6.	18-22528-B-13 MJD-1	ORLANDO CISNEROS Matthew J. DeCaminada	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1-1 4-30-18 [9]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

Debtor's Objection to Allowance of Claim 1-1 of Cavalry SPV I, LLC 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.

Debtor Orlando Cisneros ("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 $5,694.33. 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 proof of claim, the last payment was received on or about March 19, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on April 25, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

7. 18-20332-B-13 WANDA BARBER MOTION TO CONFIRM PLAN
SDH-2 Scott D. Hughes 5-9-18 [40]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan 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 having been filed by 2nd Chance Mortgage, Inc. and the Chapter 13 Trustee. Debtor filed a response.

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

First, the second amended plan does not specify a cure of the post-petition arrearage for the month of February 2018 including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Nationstar Mortgage, LLC in Class 4. The Trustee is unable to comply with § 3.07(b) of the plan.

Second, feasibility depends on the Debtor selling or refinancing property by June 25, 2022. No evidence of the condition of the real estate market or Debtor's ability to refinance at that time has been presented. Furthermore, the nonstandard provisions of the plan provide for a contingency to change the treatment of 2nd Chance Mortgage, Inc. from Class 2 to Class 3 if the loan is not paid in full by June 25, 2022. It appears that the Debtor lacks confidence in her ability to sell or refinance the property. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan cannot be effectively administered. Creditor 2nd Chance Mortgage, Inc. is listed in Class 2 and the plan provides for a payment of $217.87 for the ongoing mortgage payment and a payment of $413.66 for the pre-petition arrears. However, Class 2 claims are modified by the plan and the Class 2 table provides for only one monthly payment, not two separate payments.

Fourth, the plan cannot be effectively administered because it provides for a contingency to change the treatment of 2nd Chance Mortgage, Inc. from Class 2 to Class 3 if the claim is not paid in full by June 25, 2022. This causes an undue burden upon the Trustee to monitor the case to ensure that the claim is paid in full by June 25, 2022, which is month 52 of the 60-month plan, and to determine whether or not to cease making payments on the claim after June 25, 2022. Debtor does not state that she will file a modification of the plan or that she can enter into a stipulation with the affected creditor if the claim is not paid in full by June 25, 2022.

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

The court will enter an appropriate minute order.

8. 18-22952-B-13 THERESE ALVES
MOH-1 Michael O'Dowd Hays

MOTION FOR RETURN OF COLLATERAL AND FOR SANCTIONS
6-5-18 [17]

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

9. 16-22855-B-13 JESSE TAYLOR MOTION TO MODIFY PLAN
KWS-1 Matthew J. DeCaminada 5-10-18 [50]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 10, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10. 17-27458-B-13 MOT-2 — CARMEN HALAMANDARIS, T. Mark O'Toole — MOTION TO CONFIRM PLAN, 4-30-18 [57]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April, 30, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

11. 14-27570-B-13 DANIEL/DENISE STYRING MOTION TO MODIFY PLAN
KWS-4 Kyle W. Schumacher 5-15-18 [59]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 filed on May 15, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

12. 18-20871-B-13 VICTORIA RUGG
JPJ-1 Douglas B. Jacobs

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-16-18 [14]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

The Debtor stated that she will but has failed to file an amended petition to reflect a previous bankruptcy filed in the last eight years. Case number 10-40035 was filed on July 2, 2010, and was dismissed on August 30, 2010. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Additionally, the meeting of creditors was continued from May 10, 2018, to June 14, 2018. The Debtor was required to provide the Trustee with a copy of an income tax return for the most recent tax year a return was filed. It is unclear whether a copy of the income tax return was filed or if the Debtor appeared at the continued meeting of creditors.

Regardless, the Debtor has not filed an amended petition. The plan filed February 15, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

13. 18-22073-B-13 JOSE GALINDO MOTION TO SELL
SLE-1 Steele Lanphier 6-1-18 [25]

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

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 1010 River Way, Folsom, California ("Property").

Proposed purchasers Shannon Gassuan and Gilbert Gassuan have agreed to purchase the Property for $625,000.00. The purchase price will be sufficient to satisfy all known liens and encumbrances on the Property and closing and escrow costs. The Debtor estimates that, after satisfaction of all liens and encumbrances, the net proceeds to be paid to the Debtor will be approximately $53,550.02. The Property has a claimed exemption in the amount of $100,000.00.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court will enter an appropriate minute order.

14. 17-25575-B-13 BJD-2 — ORACIO QUEZADA, Mark A. Wolff — CONTINUED COUNTER MOTION TO DISMISS CASE, 4-17-18 [75]

Tentative Ruling: The Counter-Motion for Order Dismissing Case was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). It was continued from May 15, 2018, to allow Debtor the opportunity to obtain a refinance of real property.

The matter will be determined at the scheduled hearing.

15. 17-22076-B-13 DAVID/YOLANDA JONES MOTION TO BORROW
BLG-3 Chad M. Johnson 5-21-18 [47]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

The Motion for Permission to Obtain Financing has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to incur post-petition debt.

The motion seeks permission to acquire a parent student loan to aid son, David Jones, Jr., in his college educational expense. The loan is a parent loan and Debtor David Jones will be the borrower. The loan is through the U.S. Department of Education, William D. Ford Federal Direct Loan Program. The loan amount is $13,758.00 with an interest rate of 7%. Because the loan is a Direct PLUS Loan, there is no "out of school date" listed to determine when repayment begins and therefore the terms of repayment are not disclosed on the loan documents. Nonetheless, Debtors estimate that the payments will be $100.00 per month commencing after Debtor's son graduates, which is anticipated to happen next year.

Debtors assert that they will adjust their expenses by cutting their budget for recreation, clothing, and personal care and will be able to continue making plan payments. Debtors are in month 14 of their plan and current on plan payments.

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 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 provides all material provisions as required by Rule 4001(c). There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

16. 18-21379-B-13 MARISOL KANE
KWS-1 Kyle W. Schumacher

MOTION TO CONFIRM PLAN
5-11-18 [22]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on May 11, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

17. 17-23780-B-13 MELANIE PAULY MONTERROSA MOTION TO MODIFY PLAN
SDB-4 W. Scott de Bie 5-7-18 [134]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

The case having been dismissed on June 13, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

18. 18-21994-B-13 LBG-2 — ALVIN CATLIN, Lucas B. Garcia — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, 5-18-18 [30]

Final Ruling: No appearance at the June 19, 2018, hearing is required.

The Motion to Value Secured Portion of Claim of Capital One Auto Finance has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, it appears that Capital One Auto Finance was not properly served. The proof of service lists a mailing address for the creditor at 7933 Preston Road, Plano, TX 75024-2302. However, the Secretary of State Business Search states that this entity has been surrendered and that the most current California registered Corporate Agent for Service of Process address is with CSC - Lawyers Incorporating Service (C1592199) and The Prentice-Hall Corporation System, Inc. (C0257078).

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

The court will enter an appropriate minute order.

19. 18-23098-B-13 ROBERT/TERRA BROWN
GME-1 Steele Lanphier

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-26-18 [10]

ARAM SALIMI VS.

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

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

Aram Salami ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 10786 Provincetown Way, Mather, California (the "Property"). Movant has provided the Declaration of George M. Eckert to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on May 3, 2018. Dkt. 15, pp. 4-5. Movant seeks to proceed with an unlawful detainer action.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtors would be at best tenants at sufferance. Movant purchased the Property on May 3, 2018, at a trustee's foreclosure sale and served a Notice to Quit on May 15, 2018. Dkt. 15, pp. 2-3.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 15, pp. 4-5. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 court will enter an appropriate minute order.

20. 18-23467-B-13 PAUL BRUNO
Pro Se

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
6-8-18 [14]

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

The court's decision is to grant the motion so that the automatic stay remains intact and order the venue of this Chapter 13 case transferred to the United States Bankruptcy Court for the District of Arizona. Any interested parties may move for relief from the automatic stay in the District of Arizona.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was a Chapter 11 filed with the District of Arizona as case no. 2:16-bk-11826-PS on August 19, 2016, and dismissed on September 7, 2017, upon Debtor's request. The court order entered September 7, 2017, granted Debtor's motion to dismiss subject to the following conditions as briefly summarized:

> 1. Debtor shall pay to Abeyta temporary support obligations as ordered by the California Superior Court in the total amount of $42,337.00, which sum shall be paid in full prior to the date of this order lodged with the court.
>
> 2. If Debtor refiles a subsequent bankruptcy, it shall be assigned to the Honorable Paul Sala.
>
> 3. Debtor shall pay all outstanding U.S. Trustee's fees due for the time period of July 1, 2017, to August 16, 2017.
>
> 4. Agreements between the Debtor and Abeyta in this order regarding the California litigation shall be without prejudice to either party's claims or defenses in the event of an appeal from any decisions that have been made to date in the California litigation.
>
> 5. All adversary proceedings filed in this case shall be dismissed without prejudice.

Case no. 2:16-bk-11826-PS, dkt. 334. Pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Discussion

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

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

The Declaration of Paul Bruno (dkt. 21) states that he has experienced a change in circumstances because he has claims of value now that he did not have in the prior case. On this basis, the court grants the Debtor's motion and the automatic stay shall remain intact.

The court will also order the venue of this Chapter 13 case transferred to the United States Bankruptcy Court for the District of Arizona.

The court, on its own motion, ordered the Debtor to demonstrate that the proper venue for this Chapter 13 case is the Eastern District of California and also to explain why this case should not be transferred to the District of Arizona. Dkt. 18. The Debtor addressed both matters in a declaration filed on June 14, 2018. Dkt. 21. The court has reviewed the Debtor's declaration and its attached exhibits and addresses both below.

The applicable venue statute states, in pertinent part, as follows:

> Except as provided in section 1410 of this title, a case under [the Bankruptcy Code] may be commenced in the district court for the district – (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person . . . that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district[.]

28 U.S.C. § 1408(1).

If the Debtor meets any one of the four tests (domicile, residence, principal place of business, or principal assets) for the applicable time period (180 days in the Eastern District of California prior to the petition date or the greater portion of that 180-day period in this district than in any other district) venue of this Chapter 13 case is proper in the Eastern District of California. *See In re Cole*, 2008 WL 2857118, *2 (Bankr. N.D. Tex. 2008) (tests for venue are in the alternative).

The Debtor states in his declaration that he is "contemplating relocating to California[.]" Dkt. 21 at 4:15-16. However, the Debtor has apparently not yet done so inasmuch as the petition lists a Phoenix, Arizona, address of the Debtor's residence. Dkt. 1. Domicile and residence are therefore insufficient to establish proper venue in the Eastern District of California.

The Schedules reflect that the Debtor's principal place of business is either Phoenix, Arizona, or Danville, California.[1] *See* Dkt. 16, Schedule I. Neither suffice to establish venue in the Eastern District of California.

So that also leaves only the fourth test, *i.e.*, the principal location of the Debtor's

[1] The court takes judicial notice that Danville, California, is in the Northern District of California. The court also takes judicial notice that the Debtor previously filed a Chapter 13 case in the United States Bankruptcy Court for the Northern District of California on August 19, 2016, as case no. 16-42334, which, at the Debtor's request, was transferred to the United States Bankruptcy Court for the District of Arizona on October 13, 2016, following a hearing held on October 7, 2016. The Arizona bankruptcy case was assigned to Bankruptcy Judge Sala and designated case no. 16-11826. The Arizona bankruptcy case was dismissed on September 7, 2017.

assets. According to the Schedules, most of the Debtor's assets are either in Arizona or the Northern District of California. Nevertheless, the Debtor states in his declaration that he is (and since 2012 has been) a beneficiary of a California spendthrift trust which owns real property located in San Joaquin County. Dkt. 21 at 4:17. Exhibit G to the Debtor's declaration appears to confirm this. *See* Dkt. 21, Ex. G. The court assumes for purposes of its venue analysis that the Debtor's beneficial interest in a trust that owns California real property is sufficient to give the Debtor an asset in the Eastern District of California making venue of this Chapter 13 case in the Eastern District of California proper. *See* Cal. Probate Code §§ 15000 *et seq.*, 15306.5; *Carmack v. Reynolds*, 2 Cal. 5th 844, 856-857 (2017); *Frealy v. Reynolds (In re Reynolds)*, 867 F.3d 1119 (9th Cir. 2017).

Based on the assumption that venue in the Eastern District of California is proper, the court turns to Federal Rule of Bankruptcy Procedure 1014(a)(1) which states:

> If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

Fed. R. Bankr. P. 1014(a)(1).[2]

The procedural requirements of Bankruptcy Rule 1014(a)(1) are satisfied. The order filed on June 11, 2018, directs the Debtor to address venue and therefore is the court's own venue motion. Dkt. 18. Notice of the hearing set by that order was given to the Debtor, the United States trustee, the Chapter 13 Trustee ("Trustee"), and all creditors on the mailing matrix on June 12, 2018. *See* Dkt. 22, 23. And a hearing to consider venue was held on June 19, 2018. Therefore, the only remaining question is whether venue should be transferred in the interest of justice or for the convenience of the parties.

When determining whether to transfer venue for the convenience of the parties the court considers the following factors:

(1) proximity of creditors of every kind to the court;
(2) proximity of the debtor;
(3) proximity of witnesses necessary to the administration of the estate;
(4) location of the assets;
(5) economic administration of the estate; and
(6) necessity for ancillary administration if liquidation should result.

In re B.L. of Miami, Inc., 294 B.R. 325, 328-329 (Bankr. D. Nev. 2003) (citations omitted).

Proximity of the creditors weighs in favor of a venue transfer. Schedule D reflects that all secured creditors are located in Arizona. *See* Dkt. 16. Schedule E/F reflects that an overwhelming majority of unsecured creditors are also located in Arizona with a few in the Northern District of California, *i.e.*, Martinez and Danville, a few in Southern California, and a few listed as national credit card companies. *Id.* No secured or unsecured creditors appear to be in the Eastern District of California.

Proximity of the Debtor weighs in favor of a venue transfer. The Debtor resides in Phoenix, Arizona. Proceedings in this case would be held in Sacramento, California.

[2] Even if venue is improper, the same considerations noted below would apply to a venue transfer. *See* Fed. R. Bankr. P. 1014(a)(2).

Obviously, the Debtor is closer to the Phoenix courthouse than he is to the courthouse in Sacramento.

Proximity of witnesses necessary to administration of the estate weighs in favor of a venue transfer. As the Debtor states in his declaration, pending litigation will effect the administration of this bankruptcy case. Although the Debtor is involved in an arbitration proceeding in Los Angeles, California, a state court action in Denver, Colorado, and family law matter in the Northern District of California, *i.e.*, San Francisco, a majority of the Debtor's cases are concentrated in and pending before Arizona state courts.

The location of the Debtor's assets weighs in favor of a venue transfer. Although the court has assumed the Debtor's interest as a beneficiary of a trust that owns real property located in San Joaquin County establishes venue in the Eastern District of California, the majority of the Debtors' assets are located outside the Eastern District of California and are either in Arizona or the Northern District of California, *i.e.*, Danville.

As noted above, according to the Debtor the economic administration of this Chapter 13 case is likely to be greatly affected by the outcome of the Debtor's pending litigation. Indeed, the Debtor's recently-filed Chapter 13 plan lists "claims" as a source of funding for payments proposed under the plan. Dkt. 24, § 2.01.

Finally, with significant litigation pending in Arizona and the Northern District of California, the necessity of ancillary jurisdiction should liquidation result favors a venue transfer.

Considering all relevant factors, the court concludes that the convenience of the parties prong favors a venue transfer to either the District of Arizona or the Northern District of California. And so too does the interest of justice prong which considers the same set of factors. *See B.L. of Miami*, 294 B.R. at 334 (citation omitted). Further, retaining venue in Sacramento, California, would make it difficult and expensive for interested parties to participate in the bankruptcy case. Perhaps that is the Debtor's intent. But in any case, if venue in this district is retained the overwhelming number of creditors would be geographically distant and, if they wanted to participate in the case, they would need to incur the expense of retaining local counsel, travel to the forum, or be limited to telephonic appearances.

Therefore, for the foregoing reasons, and giving deference to the Debtor's venue choice, the court will order a venue transfer of this case from the Eastern District of California to the District of Arizona. The District of Arizona rather than the Northern District of California is the more appropriate venue for two reasons. First, a 90-mile transfer from the Eastern to the Northern District of California does nothing to alleviate the concerns expressed above. In fact, the court takes judicial notice that Bankruptcy Judge Novak expressed many of the same concerns when he heard the Debtor's motion to transfer venue from the Northern District of California to the District of Arizona. And therein lies the second reason. The Debtor previously requested a venue transfer from the Northern District of California to the District of Arizona and that request was granted.[3]

The court will enter an appropriate minute order.

[3] The Debtor is also subject to an order entered in his Arizona bankruptcy case which states: "If the Debtor refiles a subsequent bankruptcy, it shall be assigned to the Honorable Paul Sala." *In re Bruno*, case no. 16-11826, dkt. 334 at 2:17-18. Notably, the order does not limit any refiled case to a case filed in Arizona.

21. 17-26199-B-13 HOWARD/CLARALYN SANT — MOTION TO RECONSIDER DISMISSAL OF CASE O.S.T. 6-8-18 [47]
PLC-3 Peter L. Cianchetta

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

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

Chapter 13 debtors Howard John Sant and Claralyn C. Sant ("Debtors") move for reconsideration, dkt. 47, of an order entered on May 29, 2018, dismissing this Chapter 13 case pursuant to 11 U.S.C. § 109(g)(1), dkt. 40, in response to the Debtors' *ex parte* request for dismissal filed on May 25, 2018. Dkt. 38. After learning that the Debtors failed to turn over federal and state tax refunds in excess of $2,500.00 totaling $21,436.00, dkts. 29 & 31, as they were ordered to do in the confirmation order entered on November 17, 2017, dkt. 24, the court dismissed this case under § 109(g)(1) for the Debtors' willful failure to abide by an order of the court.[1] Dkts. 40, 41. The § 109(g)(1) dismissal triggered a 180-day bar to the refiling of any single or joint bankruptcy case.

At a minimum, the Debtors do not dispute that they received a $19,884.00 federal tax refund. Indeed, Mr. Sant states in his declaration filed in support of the motion for reconsideration that the Debtors "received the federal income tax refunds a week before the decision to request to dismiss[.]" Dkt. 49, ¶ 6.[2] Inasmuch as the Debtors' filed their *ex parte* request to dismiss on May 25, 2018, the Debtors received and were in possession of the federal tax refund by at least May 18, 2018. That timing is critical.

The Trustee moved to dismiss this case on May 7, 2018, based on the Debtors' failure to turn over their federal and state tax refunds in excess of $2,500.00 as they were ordered by the confirmation order to do. The Debtors assert they did not fail to turn over their tax refunds - and therefore they did not fail to abide by the confirmation order - because they did not have possession of the tax refunds when the Trustee's motion to dismiss was filed and so, at that time, they had nothing to turn over to the Trustee. Dkt. 49, ¶¶ 3, 7, 10, & 14. That may be the case, but, according to Mr. Sant's declaration the Debtors were in possession of at least their federal tax refund when they requested an *ex parte* dismissal on May 25, 2018, having received "a week" before.

The Debtor's receipt and possession of their federal tax refund triggered an affirmative obligation under the confirmation order to turn over $17,344.00 of that refund to the Trustee ($19,844.00 - $2,500.00). The Debtors did not do that. Instead, as Mr. Sant explains, the Debtors retained the entire federal tax refund (and

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[1] The confirmation order states: "The Debtors shall pay into the plan all income tax refunds in excess of $2,500.00." Dkt. 24 at 2:7. The federal tax refund was $19,884.00 and the state tax refund was $4,052.00 totaling $23,936.00. Dkt. 31, ¶ 4. Less $2,500.00, the Debtors were ordered to pay $21,436.00 into the plan.

[2] Mr. Sant's declaration filed in support of the motion for reconsideration is erroneously captioned DECLARATION IN SUPPORT OF MOTION TO RECONSIDER JUNE 7, 2010, ORDER ON MOTION TO REDEEM. The Debtors moved for reconsideration of a dismissal order - not an order on a motion to redeem. And the dismissal order was entered on May 29, 2018, not June 7, 2010. The declaration is also replete with legal conclusions that the Debtors did not willfully fail to abide by the confirmation order. The court disregards those legal conclusions.

apparently the entire state tax refund as well) and "made a decision to . . . purchase reliable vehicles[.]" Dkt. 49, ¶ 12.[3] Mr. Sant also states that the Debtors decided to retain and use their tax refunds to purchase vehicles despite being told by their attorney that the Trustee did not consent to the use of the refunds for that purpose and, in fact, their attorney "was told [by the Trustee] that the Order is to pay the fund into the plan[.]" *Id.* at ¶ 2. There also is no indication that the Debtors attempted (or intended) to obtain a court order authorizing the purchase of vehicles or otherwise comply with the applicable local rules in that regard. *See* Local Bankr. R. 3015-1(h).

Discussion

When, as here, a motion for reconsideration is filed within fourteen (14) days of the entry of the underlying order, the motion is decided under Federal Rule of Civil Procedure 59(e) applicable by Federal Rule of Bankruptcy Procedure 9023. *See Dicker v. Dye (In re Edelman)*, 237 B.R. 146, 151 (9th Cir. BAP 1999). Relief under Rules 59(e)/9023 is an extraordinary remedy which is used sparingly. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). In fact, such a motion may only be granted on one of four grounds: (i) to correct manifest errors of law or fact upon which the judgment rests; (ii) to present newly discovered or previously unavailable evidence; (iii) to prevent manifest injustice; or (iv) if justified by an intervening change in controlling law. *Id.*

Grounds (ii) and (iv) are not applicable here. Debtors present no newly discovered and previously unavailable evidence. They also cite no intervening change in controlling law.

Ground (iii) also is inapplicable. "[M]anifest injustice does not exist where . . . a party could have easily avoided the outcome[.]" *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 673 (D.C. Cir. 2004)(internal quotation marks and brackets omitted). The outcome here, *i.e.*, the § 109(g)(1) dismissal and corresponding 180-day bar to refiling, was easily avoidable and entirely within the Debtors' control. All the Debtors had to do was turn over $17,344.00 of the federal tax refund in their possession (and the entire state tax refund upon receipt). Alternatively, if the Debtors truly needed replacement vehicles and the Trustee refused to consent to the use of the tax refunds for that purpose, the Debtors could have petitioned the court for permission to use their tax refunds out of necessity. What the Debtors were not free to do was retain the entire federal refund (and the state one as well) and spend the refund(s) over the Trustee's objection, without effort to comply with the local rules and obtain a court order, and, significantly, in violation of the confirmation order.[4]

That leaves ground (i). And the court is not persuaded that a § 109(g)(1) dismissal and the corresponding 180-day bar to refiling are clearly erroneous.

This is not a case in which the Debtors somehow were unable to abide by their obligation under the confirmation order to turn over their tax refunds in excess of $2,500.00 to the Trustee or in good faith sought relief from that obligation. Here, the Debtors received their federal tax refund, held on to it for a week, and deliberately decided not to turn over $17,344.00 of that $19,844.00 refund to the

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[3] The court understands Mr. Sant's statement to mean that the Debtors have already spent their tax refunds and purchased vehicles. The court also notes that nowhere in the motion for reconsideration or in Mr. Sant's declaration do the Debtors offer to pay all but $2,500.00 of their tax refunds into the plan as the confirmation order requires. That too suggests the refunds have been spent.

[4] The Debtors were fully aware of their obligations under the confirmation order. Mr. Sant confirms this in his declaration when he states that their attorney conferred with the Trustee and the Trustee told their attorney that "the Order is to pay the funds into the plan." Dkt. 49, ¶ 2.

Trustee (the state refund as well) and to instead use the refunds for unauthorized purchases in violation of the confirmation order. So not only did the Debtors fail to abide by the terms of the confirmation order when they had the ability to do so, but they apparently had no intention whatsoever of abiding by that order. And those facts make the Debtors' failure to abide by the terms of the confirmation order willful.

To make matters worse, not only did the Debtors willfully fail to abide by the terms of the confirmation order but, while retaining the entire federal refund knowing that of it they were entitled to retain only $2,500.00, the Debtors moved *ex parte* for dismissal. That appears to the court to be a deliberate attempt by the Debtors - and their attorney - to avoid the § 109(g)(1) refiling bar. It also raises the specter of counsel's complicity in the Debtors' willful failure to abide by the confirmation order. There are, of course, ethical considerations involved when an attorney decides to disobey an order. As the California Supreme Court stated in *In re Anna Lou Kelley*, 52 Cal. 3d 487 (1990): "Disobedience of a court order, whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court." *Id.* at 495.

In any case, at a minimum, the Debtors received their federal tax refund, deliberately retained it, apparently spent it without court approval and in violation of the confirmation order, and then sought dismissal to avoid ensuing consequences. Based on the entire record, as now supplemented, the court has no problem concluding that the Debtors willfully failed to abide by an order of the court, *i.e.*, the confirmation order, making a § 109(g) dismissal and its corresponding 180-day refiling bar warranted in this case.

Even if the court were to grant the Debtors' motion for reconsideration, the Debtors would find themselves in exactly the same position in which they were when the § 109(g)(1) dismissal order was signed and filed on May 25, 2018. Vacating the dismissal order would reinstate this case, revive the confirmation order and the Debtors' obligation therein, and further revive the Debtor's *ex parte* dismissal request. That effectively would put the court back in a position of having to consider the Debtors' request for dismissal in light of the admission by Mr. Sant in his declaration that the Debtors received and did not turn over their federal (and also apparently their state) tax refunds. Unless the Debtors have $21,436.00 of their federal and state tax refunds to pay into the plan, which as noted in footnote 3, *supra*, the court understands that the Debtors do not, the court's decision would be no different than it was on May 25, 2018, when the § 109(g)(1) dismissal order was signed and filed.

One final note. Vacating the dismissal order would also put the court in a position of having to consider whether a longer refiling bar in excess of 180 days - perhaps as long as one year - is warranted. *See Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008) (court may *sua sponte* take appropriate action to address debtor's bad faith and abusive conduct). Although the general presumption under § 349(a) is that dismissal is without prejudice, § 349(a) also permits the court to dismiss with prejudice. *Franco v. U.S. Trustee (In re Franco)*, 2016 WL 3227154, *5 (9th Cir. BAP 2016) (citation omitted). A finding of bad faith permits such a dismissal. *Id.* (citing *Leavitt v. Soto (In re Leavitt)*), 171 F.3d 1219, 1223-24 (9th Cir. 1999)). And if a dismissal with prejudice for bad faith conduct is a permanent bar to refiling a bankruptcy case, then dismissal with prejudice for bad faith conduct may include a lesser bar to refiling, such as for a period of one year. *Id.* (citing *Johnson v. Vetter (In re Johnson)*, 2014 WL 2808977, *7 (9th Cir. BAP 2014)). A deliberate and unauthorized retention and spending of tax refunds that a debtor is ordered by a confirmation order to pay into a plan for the benefit of creditors are, in this court's view, bad faith conduct and an abuse of the bankruptcy process sufficient to support a with prejudice dismissal.

Conclusion

For all the foregoing reasons, the Debtors' motion for reconsideration of the order dismissing this Chapter 13 case pursuant to § 109(g)(1) with the associated 180-day bar to refiling entered on May 29, 2018, will be denied.

The court will enter an appropriate minute order.