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: August 6, 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

August 6, 2019 at 1:00 p.m.

1.	19-21802-B-13 MB-1	JOSE PEREZ Michael Benavides	MOTION TO CONFIRM PLAN 6-23-19 [41]

No Ruling

2.	18-24304-B-13 MET-2	CARLTON/CHERYL PHENIX Mary Ellen Terranella	MOTION TO MODIFY PLAN 6-18-19 [41]

No Ruling

3.	19-23308-B-13 JPJ-01	JEFFERY/CHRISTINA JONES Bruce Charles Dwiggins	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 7-16-19 [13]

Tentative Ruling

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

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

First, the Debtors do not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the Debtors have failed to amend Schedule A/B to list guns that they own as requested by the Trustee at the meeting of creditors. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

Fourth, the Debtors did not file their updated certificates of completion from an approved nonprofit budget and credit counseling agency. The Debtors have not complied with 11 U.S.C. § 190(h) and 11 U.S.C. § 521(a)(3).

Fifth, the Debtors must clarify the treatment of creditors Golden One Credit Union and Mortgage Lender Services. Debtors list them both in Class 1 of the plan. However, the Debtors testified at the meeting of creditors that they only have one mortgage on the home and that a portion of the interest owing on the loan was assigned to a different creditor. If this is the case, Class 1 is not the proper treatment for both of these creditors.

The plan filed May 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

4. 19-22409-B-13 CHARLES/GENNA KRONSCHABEL MOTION TO CONFIRM PLAN
DPR-1 David P. Ritzinger 7-2-19 [28]

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.

5.	19-23109-B-13 JPJ-01	SHAWN/LORENA MOORE Travis E. Stroud	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 7-16-19 [17]

CONTINUED TO 8/13/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/08/19.

Final Ruling

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

6. 17-26011-B-13 MICHEL FALZON — MOTION TO MODIFY PLAN
MC-2 Muoi Chea — 6-29-19 [42]

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.

7. 19-21111-B-13 JOSELITO HALLARE MOTION TO CONFIRM PLAN
AF-2 Arasto Farsad 6-19-19 [46]

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.

8. 16-28212-B-13 JACKSON/ALYSHA FONSECA MOTION TO SELL
RJM-3 Rick Morin 7-15-19 [44]

Tentative Ruling

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

The court's decision is to 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. Debtors propose to sell the property described as 790 Holsteiner Court, Galt, California ("Property").

Proposed purchaser Wilson and Daneila Hernandez have agreed to purchase the Property for $365,000.00. Debtors anticipate netting $90,232.28 from the sale after paying all liens, closing costs, and real estate commissions. Debtors understand that they will need to deposit the net proceeds with the Chapter 13 Trustee for distribution to Debtors' creditors. This sale is in the best interests of the bankruptcy estate because it will provide for the full payment of all claims and will provide for that payment sooner than had the plan run for the full 60 months.

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

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

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

The court will enter a minute order.

9. 19-23713-B-13 JACKLYN ARENDS
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [17]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed June 11, 2019, will be confirmed.

The objection and motion are 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.

10. 17-24414-B-13 AMANDA VARGAS — MOTION TO VACATE DISMISSAL OF CASE
MOH-1 Michael O'Dowd Hays — 7-23-19 [54]

DEBTOR DISMISSED: 07/10/2019

Final Ruling

The court has reviewed the motion, and all related declarations and exhibits. The court also takes judicial notice of the docket in this Chapter 13 case.

The motion is not opposed. However, the absence of an opposition does not necessarily mean a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. *See generally, In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019).

Oral argument will not assist in the resolution of this motion. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Bankr. P. 52(a); Fed. R. Bankr. P. 7052.

Debtor Amanda M. Vargas ("Debtor") moves to vacate the order dismissing her Chapter 13 case. Dkt. 54. For the reasons explained below, the motion will be denied without prejudice to the filing of a new Chapter 13 case.

Discussion

Debtor filed this Chapter 13 case on July 3, 2017. Dkt. 1. The Debtor's plan filed July 5, 2017, Dkt. 10, was confirmed on September 12, 2017. Dkt. 24.

The Debtor's history of timely plan payments is sporadic, at best. The Chapter 13 Trustee ("Trustee") has filed multiple notices which include the following: (1) December 29, 2017, Dkt. 34; (2) August 31, 2018, Dkt. 42; (3) November 30, 2018, Dkt. 44; (4) February 28, 2019, Dkt. 46; and (5) May 31, 2019, Dkt. 48.

When the Debtor failed to satisfy the conditions of the May 31, 2019, notice of default, Dkt. 50, her case was dismissed on July 10, 2019. Dkts. 51, 52. Debtor moved to vacate the dismissal order on July 23, 2019. Dkt. 54.

Debtor states she fell behind on her plan payments due to the loss of monthly income contributions from her unmarried partner from whom she is now separated. *Id.* at ¶ 2. Debtor also states that if the dismissal order is vacated she promises to make timely plan payments and will never fall behind on plan payments again. Dkt. 56.

The problem here is that the Debtor fails to state the grounds upon which relief is requested and the basis for the requested relief. The Debtor has not demonstrated any error of law or fact, newly discovered or previously unavailable evidence, manifest injustice, or intervening change in controlling law and the court perceives none. The Debtor has therefore not established a basis for relief under Federal Rule of Civil Procedure 59(e) applicable by Federal Rule of Bankruptcy Procedure 9023. *See Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). The Debtor also has not demonstrated excusable neglect and, again, the court perceives none. The Debtor has therefore not established a basis for relief under Federal Rule of Civil Procedure 60(b) applicable by Federal Rule of Bankruptcy Procedure 9024. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).[1]

[1]Even if Rule 60(b) applies, the applicable factors weigh against relief. The automatic stay terminated when this case was dismissed. Once terminated the automatic stay can only be reimposed through an adversary

Conclusion

For all the foregoing reasons, the Debtor's motion to vacate the dismissal order and reinstate this case is denied without prejudice to the filing a new Chapter 13 case.

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

The court will enter a minute order.

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proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming the automatic stay is revived if an order that caused it to terminate is vacated, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so here would result in confusion and undue prejudice to creditors who may not comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay. Delay is minimal in that the Debtor filed her motion to vacate two weeks after the case was dismissed and set the motion for hearing on the first available calendar. Although the Debtor experienced unanticipated expenses she failed to avail herself of numerous opportunities to adjust her plan payments through a modified plan and she ignored the last notice of default. *See* 11 U.S.C. § 1329(a)(1). Dismissal, and the ability to avoid it, were therefore within the Debtor's control. Moreover, given the Debtor's repeated history of non-payment resulting in multiple notices of default the court is skeptical of the Debtor's "promise" to not miss future plan payments. The court perceives no bad faith by the Debtor. On balance, the *Pioneer-Briones* factors weigh against Rule 60(b)(1) relief.

11. 19-21614-B-13 RODELINA SANTOS — MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella — 6-15-19 [40]

DEBTOR DISMISSED: 07/16/2019

Final Ruling

The case having been dismissed on July 16, 2019, the motion to confirm plan 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.

12. 19-23422-B-13 DANIEL ALTSTATT
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-15-19 [24]

Tentative Ruling

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

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

First, the Debtor has failed to amend his plan to specify when vesting will occur as requested by the Trustee at the meeting of creditors held July 11, 2019. Debtor filed a response explaining that he did not have time to make the requested amendments from the time the meeting of creditors was held to when the Trustee filed its objection to confirmation on July 15, 2019. The Debtor has yet to file an amended plan. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the plan cannot be assessed for feasibility. According to Schedule I, the Debtor's net income from rental property and/or operation of a business is $1,375.00. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses. The Debtor requests additional time of 30 to 60 days to obtain the requested documentation.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $1,499,820. The total amount that will be paid is $0.00. The Debtor states in his response that he is in the process of amending his schedules to address the appropriate exemptions.

Separately, the issues regarding Debtor's submission of proof of his social security number and delinquency in plan payments have been resolved. Debtor states in his response that he has provided the Trustee with proof of his social security number and has made two plan payments.

Nonetheless, the plan filed July 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for the first through third reasons. The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

13. 19-23824-B-13 ROLINA BROWN
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC.
7-7-19 [26]

Final Ruling

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

The court's decision is to value the secured claim of OneMain Financial Services, Inc. at $3,500.00.

Debtor's motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Acura MDX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,500.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Chapter 13 Trustee David Cusick does not oppose the Debtor's motion to value collateral at $3,500.00

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7-1 filed by OneMain Financial Group, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on September 22, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,824.38 according to Claim No. 7-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $3,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

14. 17-28230-B-13 ROYAN WITHERS
JHW-1 Mark A. Wolff

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-19 [81]

CREDIT ACCEPTANCE CORPORATION VS.

Tentative Ruling

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

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

Credit Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Jeep Liberty (the "Vehicle"). The moving party has provided the Declaration of Cynthia Litton to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant states that Debtor contacted Movant and requested the Vehicle be picked up. Movant obtained possession of the Vehicle on June 6, 2019. The Vehicle is held pending the relief from stay.

Debtor filed a response of non-opposition to the motion.

Therefore, 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.

15. 18-27132-B-13 STUART KOPPLE
Thru #16 Pro Se

MOTION TO CONFIRM PLAN
7-15-19 [119]

Final Ruling

Before the court is a Motion to Confirm Fourth [sic] Amended Plan filed on July 15, 2019, by Debtor Stuart Kopple ("Debtor"). Dkt. 119. The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 22 days' notice was provided. Therefore, the motion to confirm the fourth amended plan is denied.

Additionally, the Debtor is ordered to show cause why the case should not be dismissed. This case was filed on November 13, 2018, and no plan has been confirmed. At a minimum, a Chapter 13 case pending 9 months without a confirmed plan (and with the motions to confirm third and fourth amended plans being denied, the case is likely to be pending over ten months without a confirmed plan) is unreasonable delay by the Debtor and is prejudicial to creditors under § 1307(c)(1). The court also entered an order on July 2, 2019, that no further continuances would be permitted, dkt. 113, which means Debtor's inability to confirm a fourth amended plan is also (and alternatively) grounds for dismissal under § 1307(c)(5).

Debtor may respond to the Order to Show Cause by August 13, 2019. The hearing on the Order to Show Cause is set for August 20, 2019, at 1:00 p.m.

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

The court will enter a minute order.

16. 18-27132-B-13 STUART KOPPLE
Pro Se

CONTINUED MOTION TO CONFIRM PLAN
5-3-19 [94]

Final Ruling

Before the court is a Motion to Confirm Third [sic] Amended Plan filed on April 19, 2019, filed by Debtor Stuart Kopple ("Debtor"). Dkt. 94. The Debtor acknowledged in a June 28, 2019, response to the Chapter 13 Trustee's objection that the third amended plan is not confirmable and therefore he will file a fourth amended plan. *See* Dkt. 110, ¶ 11. Based on the Debtor's concession that the third amended plan filed April 19, 2019, is not confirmable, the motion to confirm is denied.

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

The court will enter a minute order.

17. 19-23233-B-13 CHRISTOPHER WHITLOCK
JPJ-01 Thomas A. Moore

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-16-19 [14]

Tentative Ruling

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,800.00, which represents approximately 1 plan payment. An additional payment of $1,800.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has failed to provide the Trustee with a detailed statement showing gross receipts and ordinary and necessary expenses related to his income from the operation of a business. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the claim of Reliablu Credit is misclassified as a Class 4 claim since the Debtor has 60 payments left owing on the loan. The claim should be paid under Class 2.

Fourth, the Debtor has not provided the Trustee with a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses relating to his RV Repair business. It cannot be determined whether the business is solvent or necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, the Debtor has not amended Schedule I to reflect that he owns a business or amended Schedule E/F to include unsecured creditors, some of which have already filed proof of claim. The Debtor has not complied with 11 U.S.C. § 521 and the plan does not comply with 11 U.S.C. § 1325(a)(1) and (a)(3).

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

Seventh, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B) because the Debtor did not file a Schedule I attachment that would provide information as to Debtor's gross receipts, whether the Debtor is over the Median Income, and whether the Debtor would be required to complete Forms 122C-1 and C-2 in their entirety.

Eighth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors will receive a higher distribution in a Chapter 7 proceeding. Although Debtor's schedules do not list any unsecured creditors, unsecured creditors have already filed proofs of claim. And yet the Debtor's schedules state a total value of non-exempt property at $145,445.87 while paying unsecured creditors $0.00.

For the reasons stated above, the plan filed May 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

18. 19-23034-B-13 JPJ-1 — ADAM SMITH — Scott D. Hughes — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS — 7-1-19 [17]

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 exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of both California exemptions § 703 and § 704 to claim his interest in real and/or personal property. Pursuant to California Code of Civil Procedure § 703.140(a)(1) and (a)(3), a debtor may claim certain property as exempt under either § 703 or § 704 but not both.

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

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

The court will enter a minute order.

19.	19-23734-B-13 NLG-2	PATRICK/JEAN MICHELLE SCOTT Seth L. Hanson	OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS, INC. 7-2-19 [13]

Tentative Ruling

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

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

Objecting creditor Quicken Loans, Inc. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $1,393.04 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Additionally, due to the existence of pre-petition arrears, creditor's claim is incorrectly classified in Class 4, which is reserved for claims not in default on the petition date. The Quicken Loans proof of claim is evidence of the Debtors' prepetition default.

The plan filed June 12, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

20. 19-23035-B-13 LILA SADAT
JPJ-1 Bonnie Baker

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-16-19 [22]

Tentative Ruling

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

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

The Trustee objects to confirmation on grounds that plan payments do not equal the aggregate of the Trustee's fees, monthly payment of administrative expenses, and monthly dividends on account of Class 2 and 4 secured claims, that the treatment of creditor Craig Morris needs to be clarified, that feasibility of the plan depends on the selling or refinancing of property, and that the Debtor does not appear to make plan payments. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Debtor has filed a response stating that she will amend her schedules and file an amended plan that will resolve the Trustee's issues.

Therefore, the plan filed May 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.

21. 19-23235-B-13 MICHAEL/TRACY GRAHAM
JPJ-1 Bruce Charles Dwiggins

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-16-19 [16]

Tentative Ruling

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

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

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

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

Third, the Debtors do not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Fourth, the Debtors have not amended Schedule A/B to reflect Joint Debtor's 401(k) retirement account. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fifth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtor has taken impermissible deductions at Lines 17 and 45. Without these impermissible deductions, the Debtors' monthly disposable income should be $1,228.18 and the Debtors must pay no less than $73,690.80 to unsecured non-priority creditors. The plan pays only $57,293.31 to unsecured non-priority creditors.

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

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

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

The court will enter a minute order.

22. 19-23338-B-13 KEVIN/BRANDEE MCCANN
JPJ-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [28]

Tentative Ruling

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

The court's decision is to overrule the objection and confirm the plan.

The Joint Debtor appeared at the continued meeting of creditors on July 25, 2019, as required pursuant to 11 U.S.C. § 343 and the Debtors have cured their delinquency in plan payments. The Debtors have carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied,]and the plan filed June 7, 2019, is confirmed.

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

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

The court will enter a minute order.

23.	18-25646-B-13 JPJ-1	THADDEUS/ANGELA FRIDAY Candace Y. Brooks	OBJECTION TO CLAIM OF PINNACLE CREDIT SERVICES, LLC, CLAIM NUMBER 30 6-6-19 [38]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 30-1 of Pinnacle Credit Services, LLC and the claim is disallowed in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector") requests that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Claim No. 30-1. The claim is asserted to be in the amount of $1,649.36. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the account was charged off on or about December 16, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 6, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

24.	18-27747-B-13 SLE-3	VIRGINIA HUNT Steele Lanphier	MOTION TO CONFIRM PLAN 6-28-19 [50]

No Ruling

25. 19-23553-B-13 JPJ-1 **Thru #26**
SHAWN/HEATHER WHITNEY
John G. Downing
OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [17]

Tentative Ruling

Based on the court's final ruling at Item #26 for the Objection to Confirmation of Plan by GBS 1401 South Virginia, LLC (dkt. 23), the Trustee's objection is overruled as moot and the motion to dismiss is denied as moot.

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

The court will enter a minute order.

26. 19-23553-B-13 LWA-1
SHAWN/HEATHER WHITNEY
John G. Downing
OBJECTION TO CONFIRMATION OF PLAN BY GBS 1401 SOUTH VIRGINIA, LLC
7-18-19 [23]

Tentative Ruling

The court has reviewed all objections and related documents. The court has also reviewed and takes judicial notice of the docket and the claims register in this case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The Chapter 13 plan filed by debtors Shawn Whitney and Heather Whitney ("Debtors") is before the court for confirmation. Dkts. 2, 10. There are two objections to confirmation. One is filed by the Chapter 13 Trustee ("Trustee"). Dkt. 17. The other is filed by creditor GBS 1401 South Virginia, LLC ("GBS"). Dkt. 23.

For the reasons explained below, the GBS objection will be sustained, the Trustee's objection overruled as moot, the Trustee's motion to dismiss will be denied as moot, and the case ordered dismissed under 11 U.S.C. § 109(e) absent the Debtors' timely conversion of this case to a Chapter 11 case.

Background

Debtors filed their Chapter 13 petition on June 3, 2019. Dkt. 1. Debtors also filed a plan with the petition. Dkt. 3. A confirmation hearing was set for August 6, 2019. Dkt. 10, ¶ 9.

Despite a number of defects with the Debtors' plan, the court need only focus on one which is dispositive of this case. That one is the Debtors' eligibility (or more accurately ineligibility) to be Chapter 13 debtors. GBS asserts the Debtors filed their plan in bad faith because they omitted debt from the Schedules and are not eligible for Chapter 13 relief. Dkt. 23 at 4:13-15. More precisely, GBS asserts that the Debtors' unsecured debt exceeds the statutory cap of § 109(e) which makes them ineligible to be Chapter 13 debtors. The court agrees with GBS.

Schedule E/F lists an unsecured debt owed to GBS in the amount of $100,000.00. *See* dkt. 1, Sch. E/F, p.5. The debt is scheduled as "disputed." *Id.* However, the "contingent" and "unliquidated" boxes are not checked. *Id.* Schedule E/F lists total unsecured priority debt of $43,315.55 and total unsecured nonpriority debt of $241,776.17.

On July 10, 2019, GBS filed a proof of claim for an unsecured claim in the amount of $146,567.14 based on 2017 and 2018 promissory notes, a forbearance agreement, and a

confession of judgment. *See* Claim No. 7. On the same day, GBS also filed a proof of claim for an unsecured claim in the amount of $672,988.48 based on amounts owed and stipulated to by the Debtors in a lease forbearance agreement. *See* Claim No. 8.

Discussion

Chapter 13 eligibility is determined by the amount of debt held by a debtor, or as in this case joint debtors, as of the commencement of the bankruptcy case. *See In re Pete*, 541 B.R. 917, 920 (Bankr. N.D. Ga. 2015) ("The language of section 109(e) is clear: a debtor who files an individual case and debtors who file a joint case are subject to the same unsecured debt limits."). That a debtor might be able to reduce the debt amount postpetition is irrelevant. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999); *accord In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010).

Pursuant to 11 U.S.C. § 109(e), the debt limit on a Chapter 13 bankruptcy case is as follows:

> (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850 may be a debtor under chapter 13 of this title.

(Emphasis added). The statutory debt amount was last adjusted with an effective date of April 1, 2019. *See* 11 U.S.C. § 109(e).

Extensive inquiries and evidentiary hearings need not dominate in the eligibility determination analysis. *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006). In fact, Chapter 13 eligibility is normally determined as of the petition date by a review of a debtor's originally filed Schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, if a bad-faith objection is raised by a party in interest the bankruptcy court may look past the Schedules so long as the debt computation for eligibility is determined as of the petition date. *Guastella*, 341 B.R. at 918. The eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

GBS has raised a bad faith objection to confirmation of the plan. The objection is based on the Debtors' Schedules and refers to the unsecured debt the Debtor omitted from and/or misstated in the schedules which are filed under penalty of perjury. *See* Fed. R. Bankr. P. 1008. Therefore, in making the § 109(e) eligibility determination for purposes of this case, the court will exercise its discretion to look beyond the Debtors' Schedules. *See In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016) (looking beyond schedules to determine eligibility based on bad faith objection to confirmation).

According to Schedule E/F, the debt owed to GBS is marked as "disputed" but it is not marked as "contingent" or "unliquidated." Disputed debts count in the eligibility analysis. *See Sylvester v. Dow Jones & Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (9th Cir. BAP 1982); *see also Nicholes v. Johnny Appleseed of Wash. (In re Nicholes)*, 184 B.R. 82, 90-91 (9th Cir. BAP 1995).

Moreover, by not marking the debt owed to GBS as "contingent" or "unliquidated" the Debtors acknowledge that the debt owed GBS is noncontingent and liquidated. *See Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012)

(bankruptcy schedules have evidentiary value). In any event, the unsecured debt owed GBS is both liquidated and noncontingent and it was so on the petition date.

The Debtors' liability to GBS was liquidated on the petition date. A debt is "liquidated" if the amount of the debt is readily determinable. *Slack*, 187 F.3d at 1073. Whether a debt is readily determinable depends on whether the amount is easily calculable or whether an extensive hearing, contested proceedings, and substantial evidence is needed to determine the amount of the debt. *Id.* at 1073-1074. Here, the amount owed to GBS is easily calculable without the need for extensive evidentiary hearings. Claim No. 7 is based on a confessed judgment. Claim No. 8 is based on the Debtors' contractual admission.

The Debtors' liability to GBS on Claim Nos. 7 and 8 is also noncontingent and it was so on the petition date. The term "contingent" is not defined in the Bankruptcy Code. However, courts have used the "triggering event test" to differentiate between contingent and noncontingent liabilities to determine Chapter 13 eligibility under § 109(e). *In re All Media Properties, Inc.*, 5 B.R. 126 (Bankr. S.D. Tex. 1980). "[A] creditor's claim is not contingent when the 'triggering event' occurred before the filing of the chapter 13 petition." 2 Collier on Bankruptcy ¶ 109.06[2][b] (16th ed. 2011). As to Claim No. 7, a judgment establishing liability against a debtor, entered prepetition, is not a contingent debt for purposes of determining eligibility under section 109(e). *Imagine Fulfillment Servs., LLC v. DC Media Capital, LLC (In re Imagine Fulfillment Servs., LLC)*, 489 B.R. 136, 149 (Bankr. C.D. Cal. 2013). Nor, as to Claim No. 8, is a stipulated contractual debt. *Nicholes*, 184 B.R. at 91. Both are noncontingent debts.

In short, for purposes of determining the Debtors' eligibility under § 109(e), the court concludes that the total amount the Debtors owed GBS on the petition date as a liquidated noncontingent unsecured debt is $819,555.62. That amount alone puts the Debtors substantially over the $419,275 statutory unsecured debt limit in § 109(e). The Debtors are therefore ineligible for Chapter 13 relief as a matter of law.

Conclusion

Based on the foregoing, this case will be dismissed on the Trustee's ex parte application unless it is converted to a Chapter 11 case by August 6, 2019.

All other objections to confirmation of the Debtors' plan are overruled as moot.

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

The court will prepare a minute order.

27. 19-23357-B-13 AVTAR SINGH MOTION TO CONFIRM PLAN
RJ-2 Richard L. Jare 6-25-19 [28]

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.

28. 19-23457-B-13 RAYMOND SAHADEO
JPJ-1 W. Steven Shumway
Thru #31

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-15-19 [36]

Tentative Ruling

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

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

First, the Debtor failed to appear at the first meeting of creditors set for July 11, 2019, and the continued meeting of creditors set for August 1, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,435.00, which represents approximately 1 plan payment. An additional payment of $4,435.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Fourth, the Debtor has not provided the Trustee with requested copies of certain items in connection with his business Real Estate Investments including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, and proof of all required licenses or permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, the Debtor owes more than $394,725.00 in non-contingent, liquidated, unsecured debts and is therefore not eligible for relief under Chapter 13 of the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(e). The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(1).

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B and C, the total value of nonexempt property in the estate is $1,000.00. The total amount paid to unsecured creditors is $0.00.

The plan filed June 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

29. 19-23457-B-13 RAYMOND SAHADEO — OBJECTION TO CONFIRMATION OF PLAN BY RONALD ELVIDGE
KSR-1 W. Steven Shumway — 7-17-19 [48]

Tentative Ruling

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

The court has reviewed all objections and related documents. The court has also reviewed and takes judicial notice of the docket in this case. The request for judicial notice at Dkt. 57 is granted. *See* Fed. R. Evid. 201(b)(2). 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 objections of Ronald Elividge, Manmohan Passi, and Sanjeet Passi (*see* Item #66, DCN FWP-1) are sustained and, additionally, the case is ordered dismissed under 11 U.S.C. § 109(e) absent the Debtor's timely conversion.

The Chapter 13 plan filed by debtor Raymond Sahadeo ("Debtor") is before the court for confirmation. Dkts. 12, 15. There are four objections to confirmation: One is filed by the Chapter 13 Trustee ("Trustee"), dkt. 36; another is filed by creditor Ronald Elvidge ("Elvidge"), dkt. 48; another is filed by creditor Michael Koza ("Koza"), dkt. 52; and another is filed by Manmohan S. Passi and Sanjeet Passi as Co-Trustees of the Passi Family Trust dated December 11, 1995, and Passi Realty, LLC ("Passi"), dkt. 55, which the court permitted to be filed on shortened notice. Dkt. 60.

Background

Debtor filed his Chapter 13 petition on May 30, 2019. Dkt. 1. Debtor also filed a plan on June 13, 2019, dkt. 12, and a confirmation hearing was set for August 6, 2019. Dkt. 15, ¶ 9. The Debtor failed to appear at the initial § 341 meeting of creditors on July 11, 2019, as required by § 343. The Debtor also failed to appear at the continued § 341 meeting of creditors on August 1, 2019.

Despite an overwhelming number of defects with the Debtor's plan, the court need only focus on one which is dispositive. That one is the Debtor's eligibility (or more accurately ineligibility) to be a Chapter 13 debtor.

Elvidge and Passi assert that the Debtor filed his plan in bad faith because he omitted known debt from his Schedules showing that he is ineligible for Chapter 13 relief. Dkt. 48 at 1:24-28; dDkt. 55 at 1:25-2:26. More precisely, Elvidge and Passi assert that the Debtor's unsecured debt exceeds the § 109(e) statutory cap which makes him ineligible to be a Chapter 13 debtor. The court agrees with Elvidge and Passi.

Schedule E/F lists a single debt owed to Elvidge in the amount of $2,500,000.00. *See* dkt. 11, Sch. E/F. The debt is scheduled as "unliquidated" and "disputed." However, as Elvidge and Passi aptly point out, the Debtor has failed to schedule substantial other unsecured debt in the form of multiple judgments entered against him. These include the following:

> (1) a judgment against the Debtor for $570,555.00 in favor of Passi Realty LLC entered in Sacramento Superior Court Case No. 34-2017-00212569;
>
> (2) a judgment against the Debtor for $289,039.81 in favor Refugio and Gloria Valenzuela entered in Sacramento Superior Court Case No. 34-2016-0019;
>
> (3) a judgment against the Debtor for $168,879.51 in

> favor of Mark D. Chisick entered in Sacramento Superior Court Case No. 34-2017-00212693; and
>
> (4) a judgment against the Debtor for $120,670.60 in favor of The Phoenix Financial Group, Inc. entered in Sacramento Superior Court Case No. 34-2011-00112003.

In total, the Debtor failed to disclose $1,149,144.92 in known debt, of which at least $1,028,474.32 is unsecured debt.[2]

Discussion

The court's focus is on the Debtor's eligibility - or in this case ineligibility - to be a Chapter 13 debtor. Chapter 13 eligibility is determined by the amount of debt held by a debtor as of the commencement of the bankruptcy case. *See In re Pete*, 541 B.R. 917, 920 (Bankr. N.D. Ga. 2015 ("The language of section 109(e) is clear: a debtor who files an individual case and debtors who file a joint case are subject to the same unsecured debt limits."). That a debtor might be able to reduce the debt amount postpetition is irrelevant. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999); *accord In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010).

Pursuant to 11 U.S.C. § 109(e), the debt limit on a Chapter 13 bankruptcy case is as follows:

> (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850 may be a debtor under chapter 13 of this title.

(Emphasis added). The statutory debt amount was last adjusted with an effective date of April 1, 2019. *See* 11 U.S.C. § 109(e).

Extensive inquiries and evidentiary hearings need not dominate in the eligibility determination analysis. *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006). In fact, Chapter 13 eligibility is normally determined as of the petition date by a review of a debtor's originally filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, if a bad-faith objection is raised by a party in interest the bankruptcy court may look past the schedules so long as the debt computation for eligibility is determined as of the petition date. *Guastella*, 341 B.R. at 918. The eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

Elvidge and Passi have raised legitimate bad faith objections to confirmation of the Debtor's plan. The objections are based on the Debtor's Schedules and refer to unsecured debt the Debtor omitted from and/or misstated in the Schedules which are filed under penalty of perjury. *See* Fed. R. Bankr. P. 1008. Therefore, in making the § 109(e) eligibility determination for purposes of this case, the court will exercise

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[2]The $120,670.60 Phoenix Financial debt is represented by an abstract of judgment. *See* dkt. 57, exh. D. It is therefore a secured debt to the extent the abstract of judgment creates a lien on the Debtor's real property. Secured or unsecured, however, the court's analysis and conclusion below remains unchanged.

its discretion to look beyond the Debtor's Schedules. *See In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016) (looking beyond schedules to determine eligibility based on bad faith objection to confirmation).

The Passi Realty, Valenzuela, and Chisick judgments are all valid judgments. And while the Debtor may disagree with them making them "disputed" debts, disputed debts still count in the eligibility analysis. *See Sylvester v. Dow Jones & Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (9th Cir. BAP 1982); *see also Nicholes v. Johnny Appleseed of Wash. (In re Nicholes)*, 184 B.R. 82, 90-91 (9th Cir. BAP 1995). Furthermore, as explained below, the Passi Realty, Valenzuela, and Chisick judgments are also all liquidated and noncontingent as of the petition date.

The Debtor's liability on the Passi Realty, Valenzuela, and Chisick judgments is liquidated and was so on the petition date. A debt is "liquidated" if the amount of the debt is readily determinable. *Slack*, 187 F.3d at 1073. Whether a debt is readily determinable depends on whether the amount is easily calculable or whether an extensive hearing, contested proceedings, and substantial evidence is needed to determine the amount of the debt. *Id.* at 1073-1074. Here, the amounts owed on the Passi Realty, Valenzuela, and Chisick judgments are easily calculable without the need for extensive evidentiary hearings. Adding those three judgments together results in total unsecured debt of $1,028,474.30.

The Debtor's liability on the Passi Realty, Valenzuela, and Chisick judgments is also noncontingent and it was so on the petition date. The term "contingent" is not defined in the Bankruptcy Code. However, courts have used the "triggering event test" to differentiate between contingent and noncontingent liabilities to determine Chapter 13 eligibility under § 109(e). *In re All Media Properties, Inc.*, 5 B.R. 126 (Bankr. S.D. Tex. 1980). "[A] creditor's claim is not contingent when the 'triggering event' occurred before the filing of the chapter 13 petition." 2 Collier on Bankruptcy ¶ 109.06[2][b] (16th ed. 2011). A debts based on a prepetition judgment is not a contingent debt for purposes of determining eligibility under section 109(e). *Imagine Fulfillment Servs., LLC v. DC Media Capital, LLC (In re Imagine Fulfillment Servs., LLC)*, 489 B.R. 136, 149 (Bankr. C.D. Cal. 2013).

In short, for purposes of determining the Debtor's eligibility under § 109(e) the court concludes that, based on the Passi Realty, Valenzuela, and Chisick judgments alone, the total amount the Debtor owed those three creditors on the petition date as a liquidated noncontingent unsecured debt is at least $1,028,474.32. That puts the Debtor substantially over the $419,275.00 statutory unsecured debt limit in § 109(e). The Debtor is therefore ineligible for Chapter 13 relief as a matter of law.

Conclusion

Based on the foregoing, the plan filed June 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Elvidge and Passi objections (and as noted in their respective rulings all other objections) are sustained and the plan is not confirmed.

Additionally, due to the Debtor's ineligibility under § 109(e), this case will be dismissed on the Trustee's ex parte application unless it is converted to a Chapter 11 case by August 6, 2019.

The objections as noted are ORDERED SUSTAINED and this case is CONDITIONALLY DISMISSED for the reasons stated in the ruling appended to the minutes.

The court will prepare a minute order.

30. 19-23457-B-13 RAYMOND SAHADEO
PP-1 W. Steven Shumway

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-9-19 [27]

MICHAEL KOZA 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.

Michael Koza ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1504 Pastal Avenue, Davis, California (the "Property"). Movant has provided the Declaration of Phinney to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

According to Movant, the Yolo County Superior Court entered an Order for Sale of Dwelling and determined that Raymond Sahadeo ("Debtor") is not entitled to a homestead exemption. Debtor rents the Property out and does not reside at the Property. Movant states that Debtor's interest in the Property at this point is limited by final state court orders, and subject to Movant's rights to complete a sheriff sale.

Movant contends that Debtor now seeks to use a secret bankruptcy to stay enforcement of the Order for Sale and claims a fraudulent homestead exemption for this Property. Movant states that Debtor's Schedules, Statement of Financial Affairs, and proposed Chapter 13 plan include omissions and misrepresentations by concealing the sheriff sale proceedings, concealing Movant's lien, and concealing multiple junior liens on the Property.

Discussion

The court maintains the right to grant relief from stay for cause, including the lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). Lack of good faith is case for granting relief from the stay. *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986) (citing to *Matter of Littlecreek Development Co.*, 779 F.2d 1068, 1071 (5th Cir. 1986) (lack of good faith constitutes "cause" for lifting stay). The court determines that cause exists for terminating the automatic stay, including omissions, misrepresentations, and lack of good faith. *Id.*

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

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

the Property.

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.

31. 19-23457-B-13 RAYMOND SAHADEO — OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL KOZA
PP-2 W. Steven Shumway — 7-17-19 [52]

Tentative Ruling

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

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

Creditor Michael Koza ("Creditor") joins in and incorporates the arguments raised by the Chapter 13 Trustee at Item #28, dkt. 36. Additionally, Creditor states that the plan does not provide for payment on, or treatment of, its notice of levy on the property located at 1504 Pastal Avenue, Davis, California, pursuant to 11 U.S.C. § 1325(a)(5). Creditor incorporates by reference in support of its objection the arguments and evidence submitted with its motion for relief from automatic stay, dkt. 27, heard at Item #30.

The plan filed June 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

32. 19-23758-B-13 MICHAEL PETROW
SLH-1 Seth L. Hanson

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
6-19-19 [8]

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 value the secured claim of Travis Credit Union at $8,100.00.

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Honda Civic ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,100.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Travis Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on May 11, 2015, according to Claim No. 1-1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,342.62 according to Claim No. 1-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $8,100.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

33. 18-27659-B-13 BRITTANY HOLMES MOTION TO MODIFY PLAN
PSB-1 Pauldeep Bains 7-2-19 [28]

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 permit the requested modification and confirm the modified plan.

The Debtor's modified plan proposes to pay a 85% dividend to nonpriority unsecured claims. However, based on the Notice of Filed Claims, dkt. 33, the modified plan will actually pay nonpriority unsecured claims 100%. Provided that the order confirming includes appropriate language that the plan pays nonpriority unsecured claims 100%, the plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be 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.

34. 19-23259-B-13 MJ DE LA CRUZ
SJT-1 Susan J. Turner
Thru #35

MOTION TO CONFIRM PLAN
7-2-19 [18]

No Ruling

35. 19-23259-B-13 MJ DE LA CRUZ
TC-46 Susan J. Turner

MOTION FOR RELIEF FROM CO-DEBTOR STAY
7-8-19 [27]

PATELCO CREDIT UNION VS.

WITHDRAWN BY M.P.

Final Ruling

Creditor Patelco Credit Union having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

36. 19-23359-B-13 JOSE CASTRO
NFS-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF PLAN BY M&T BANK
7-18-19 [22]

Final Ruling

Jose Castro ("Debtor") filed his plan on June 7, 2019. Dkt. 11. A court-generated § 341 notice was filed June 20, 2019, with a confirmation hearing set for August 6, 2019. Dkt. 16. Debtor thereafter filed a first amended plan on July 6, 2019 (dkt. 20), but did not file a motion to confirm it. Then a second amended plan was filed on July 18, 2019 (dkt. 21), and no motion to confirm it was filed. Therefore, confirmation of the plan is denied on the court's own findings of: (1) failure to file a motion to confirm as required by the Local Bankruptcy Rules and (2) defective service, *i.e.*, 35-days' notice not given. Therefore, the court's decision is to overrule the objection of M&T Bank as moot, but nevertheless deny confirmation of the plan.

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

The court will enter a minute order.

37. 19-22260-B-13 RANDALL HERNANDEZ MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 7-2-19 [25]

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.

38. 19-22061-B-13 JULIEANNE/RANDY PRICE
MOH-1 Michael O'Dowd Hays

MOTION TO CONFIRM PLAN
6-17-19 [34]

No Ruling

39. 19-23761-B-13 JILL WILSON
JPJ-1 Peter L. Nisson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-15-19 [29]

Tentative Ruling

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $625.00, which represents approximately 1 partial plan payment. An additional payment of $625.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

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

Fifth, the plan cannot be effectively administered since 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 Debtor's attorney's fees and other administrative expenses with a monthly payment at $0.00.

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

Seventh, the plan cannot be assessed for feasibility since the plan fails to specify when vesting will occur. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Eighth, the plan fails to specify the post-petition monthly payment amount that will be paid through the plan to Citi Mortgage in Class 1. Therefore, the Trustee cannot comply with § 3.07(b) of the plan.

Ninth, the plan cannot be fully assessed for feasibility. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to her net income from rental property and/or operation of a business.

Tenth, the Statement of Financial Affairs for Individuals Filing for Bankruptcy is not signed by the Debtor. To date, no amendment has been filed. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Eleventh, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $16,387.80. The total amount that will be paid to unsecured creditors is $0.00.

Twelfth, the Debtor has failed to list a previous case that was filed. To date, no amendment has been filed. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed June 4, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

40. 19-24063-B-13 CJC-11 TYRELL FAIRLEY
Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-19 [11]

FOUNTAINS WOLF RANCH, LLC
VS.
DEBTOR DISMISSED: 07/15/2019

Final Ruling

The case having been dismissed on July 15, 2019, the motion to confirm plan 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.

41. 19-21664-B-13 RESPAL/NENITA MENDOZA MOTION TO MODIFY PLAN
AF-2 Arasto Farsad 6-19-19 [38]

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).

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

Subsequent to the filing of the Trustee's objection, the Debtors filed a new modified plan on July 30, 2019. The confirmation hearing for the modified plan is scheduled for September 17, 2019. The earlier plan filed June 19, 2019, is not confirmed.

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

The court will enter a minute order.

42.	19-21864-B-13 DAO-2	IMELDA DEL ROSARIO Dale A. Orthner	MOTION TO CONFIRM PLAN 6-11-19 [55]

No Ruling

43.	19-21465-B-13 JPJ-2	ABEL/LETICIA ARREOLA Harry D. Roth	MOTION TO CONVERT CASE TO CHAPTER 7 7-1-19 [44]

No Ruling

44.	19-23565-B-13 JPJ-1	GIANNE/RUBY -ROSE APURADO Steele Lanphier	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-15-19 [17]

Final Ruling

The case having been dismissed on August 2, 2019, the objection to confirmation is overruled as moot and the motion to dismiss is denied as moot.

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

The court will enter a minute order.

45. 19-20068-B-13 MET-3 **Thru #46**
MELANIE PAULY MONTERROSA
Mary Ellen Terranella
MOTION TO VACATE DISMISSAL OF CASE
7-9-19 [53]

DEBTOR DISMISSED: 07/03/2019

Final Ruling

Melanie Monterrosa ("Debtor") filed her motion to vacate dismissal of case, memorandum of points and authorities, and notice of hearing all with a stated hearing date of July 30, 2019. However, the matter appears on the August 6, 2019, calendar. Setting the motion on July 30, 2019, was improper. This court's end-of-month calendar is reserved for dismissals only unless the court orders otherwise and court did not order otherwise as to this motion. Therefore, the motion was set on an invalid hearing/calendar date, which means notice to parties is defective. The court's decision is to deny the motion without prejudice.

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

The court will enter a minute order.

46. 19-20068-B-13 MET-4
MELANIE PAULY MONTERROSA
Mary Ellen Terranella
MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
7-20-19 [58]

DEBTOR DISMISSED: 07/03/2019

Final Ruling

Based on dismissal of case on July 3, 2019, and denial of the motion to vacate dismissal (dkt. 53) at Item #45 (DCN MET-3), the motion to value collateral 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.

47. 19-23068-B-13 JPJ-2 | OMAR URCUYO
Peter G. Macaluso | OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-1-19 [26]

Tentative Ruling

The objection has been set for hearing on at least 28-days 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). Opposition was filed by the Debtor. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on July 26, 2019. The Trustee's objection is overruled and the claimed exemptions are allowed.

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

The court will enter a minute order.

48. 19-23669-B-13 JPJ-1 — JACK/MARYANNE JODOIN — Lucas B. Garcia — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-15-19 [17]

CONTINUED TO 8/20/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO VALUE COLLATERAL FOR WHEELS FINANCIAL GROUP/DBA LOAN MART.

Final Ruling

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

49.	18-26670-B-13 JPJ-2	ROBERT/DOROTHY RUSSO George T. Burke	MOTION TO CONVERT CASE TO CHAPTER 7 7-3-19 [62]

No Ruling

50.	18-26172-B-13 JPJ-1	TIA MCDANIELS Pauldeep Bains	MOTION TO CONVERT CASE TO CHAPTER 7 6-26-19 [20]

No Ruling

51. 19-23572-B-13 APN-1 **Thru #53**
LITA GOEBBEL
Joseph M. Canning
OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
7-18-19 [26]

Final Ruling

No appearance at the hearing is necessary. The objection is continued to September 10, 2019, to be heard after the evidentiary hearing set on Item #52, DCN JMC-1.

The court will enter a minute order.

52. 19-23572-B-13 JMC-1
LITA GOEBBEL
Joseph M. Canning
MOTION TO VALUE COLLATERAL OF TOYOTA FINANCIAL SERVICES
6-25-19 [18]

Final Ruling

No appearance at the hearing is necessary. A factual dispute regarding value exists. Creditor Toyota Financial Services filed a statement of disputed facts, which precludes the court from the deciding matter on written record. *See* Local Bankr. R. 9014-1(g)(3). This matter is set for an evidentiary hearing on September 30, 2019, at 9:30 a.m. Local Bankruptcy Rule 9017-1 applies.

The court will enter a minute order.

53. 19-23572-B-13 JPJ-1
LITA GOEBBEL
Joseph M. Canning
OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [23]

Final Ruling

No appearance at the hearing is necessary. The objection is continued to September 10, 2019, to be heard after the evidentiary hearing set on Item #52, DCN JMC-1.

The court will enter a minute order.

54. 15-25875-B-13 CARLO/KIM SAMMARTINO MOTION TO INCUR DEBT
PGM-2 Peter G. Macaluso 6-30-19 [50]

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's decision is to grant the motion.

Debtors seek permission to refinance the first mortgage on their primary residence with Jean Marsili, a family member. Debtors had an interest only loan of $1,506.56, which was set to increase. Ms. Marsili is willing to refinance the first mortgage with payments of approximately $1,371.33 as stated in the motion and secured promissory note. The interest shall be no more than 2.72%. *See* dkt. 53.

The motion is supported by the Declaration of Carlo Sammartino and Kim Sammartino. The Declaration affirms Debtors' desire to obtain the post-petition financing but incorrectly states that payments are to be $1,446.96 per month at 2.87%, which is higher than what is stated in the motion ans secured promissory note. *See* dkts. 50, 53.

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

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

Debtors have filed a response stating that the additional provisions requested by the Trustee may be added to the order.

The repayment of the new loan does not appear to unduly jeopardize the Debtors' performance of the plan filed July 24, 2015. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

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

The court will enter a minute order.

55. 19-23578-B-13 CATHERINE BYRD
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [13]

Tentative Ruling

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

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

First, feasibility depends on the granting of motions to avoid lien held by Energy Remodeling Inc. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and Trustee the motions to avoid lien pursuant to Local Bankr. R. 3015-1(I).

Second, the plan cannot be fully assessed for feasibility. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to her net income from rental property and/or operation of a business.

The issue regarding amending the Statement of Social Security Number has been resolved. Debtor filed the amended form on July 17, 2019.

Nonetheless, the plan filed June 4, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.

56.	14-27284-B-13 DJC-7	ANDREW/ROWENA CHAMP Diana J. Cavanaugh	MOTION TO SELL 7-16-19 [111]

No Ruling

57. 19-22785-B-13 ANNIEMARIE THOMAS
APN-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-26-19 [14]

TOYOTA MOTOR CREDIT CORPORATION 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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Camry (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration states that there are at least two post-petition payments in default totaling $1,177.98. Additionally, the Spooner Declaration states that the Debtor intends to surrender the Vehicle. This is supported by the plan dated May 1, 2019, which lists the Vehicle under Class 3, which includes all secured claims satisfied by the surrender of collateral.

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.

58. 19-24393-B-13 LILIA WATTS
MS-1 Mark Shmorgon

MOTION TO EXTEND AUTOMATIC STAY
7-13-19 [8]

Thru #59

Tentative Ruling

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 12, 2019, due to failure to timely file documents (case no. 19-23044, dkts. 16, 24). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

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

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

The Debtor asserts that the past and present cases were filed in order to save her primary residence. Debtor contends that her circumstances have changed and that she will succeed in the present case because she is now represented by counsel and had represented herself pro se in the prior bankruptcy case.

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

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

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

The court will enter a minute order.

59. 19-24393-B-13 LILIA WATTS
MS-2 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CORPORATION
7-13-19 [12]

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 value the secured claim of Regional Acceptance Corporation at $12,750.00.

Debtor's motion to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Jeep Compass Sport SUV 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,750.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Regional Acceptance Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on September 17, 2016, according to Claim No. 5-1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,076.53 according to Claim No. 5-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $12,750.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

60.	19-20995-B-13 SBT-4	RUDY GONZALEZ, AND ROBERTA GONZALEZ Susan B. Terrado	MOTION TO CONFIRM PLAN 6-13-19 [74]

No Ruling

61. 19-23295-B-13 MICHAEL GAINZA
JPJ-01 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-16-19 [18]

CONTINUED TO 8/13/19 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/08/19.

Final Ruling

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

62. 19-22396-B-13 JPJ-1 **Thru #64**
RUMMY SANDHU
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-22-19 [20]

Tentative Ruling

This matter was continued from July 2, 2019. The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

Feasibility depends on the granting of motions to avoid lien held by American Express and Capital One Bank (USA), N.A. Those motions are granted at Items #63 and 64 (DCN PGM-2, PGM-3).

The plan filed April 17, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED 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.

63. 19-22396-B-13 PGM-2
RUMMY SANDHU
Peter G. Macaluso
CONTINUED MOTION TO AVOID LIEN OF AMERICAN EXPRESS
5-23-19 [24]

Final Ruling

This matter was continued from July 2, 2019, to allow the Debtor to file an amended Schedule C to list a homestead exemption. The motion was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

This is a request under 11 U.S.C. § 522(f)(1) for an order avoiding the judicial lien of American Express ("Creditor") against the Debtor's property commonly known as 130 Trident Court, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,566.33. An abstract of judgment was recorded with Solano County on September 27, 2010, which encumbers the Property. A first deed of trust and second deed of trust recorded

against the Property total $626,654.84.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $475,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on amended Schedule C (dkt. 49).

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

64. 19-22396-B-13 PGM-3 — RUMMY SANDHU, Peter G. Macaluso — CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 5-23-19 [30]

Final Ruling

This matter was continued from July 2, 2019, to allow the Debtor to file an amended Schedule C to list a homestead exemption. The motion was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

This is a request under 11 U.S.C. § 522(f)(1) for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtor's property commonly known as 130 Trident Court, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,966.07. An abstract of judgment was recorded with Solano County on November 23, 2010, which encumbers the Property. A first deed of trust and second deed of trust recorded against the Property total $626,654.84.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $475,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on amended Schedule C (dkt. 49).

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

65. 19-23696-B-13 JPJ-1 — MICHAEL WILTON AND DAWN DUNN — Richard A. Hall — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON — 7-15-19 [16]

Tentative Ruling

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

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

The plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $20,769.75. The total amount that will be paid to unsecured creditors is $0.00.

The plan filed June 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

66. 19-23457-B-13 RAYMOND SAHADEO
FWP-1 W. Steven Shumway
See Also #28-31

OBJECTION TO CONFIRMATION OF PLAN BY MANMOHAN S. PASSI AND SANJEET PASSI O.S.T.
7-24-19 [55]

Tentative Ruling

The objection 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 sustain the objection and deny confirmation of the plan as this objection is addressed and incorporated into the ruling at Item #29 (DCN KSR-1).

The plan filed June 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.