UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 20, 2016 at 1:00 p.m.

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1. 12-35604-B-13 LASHUNDA CORMIER
16-2129
CORMIER V. NATIONSTAR MORTGAGE ET AL
Thru #2

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-22-16 [1]

Plaintiff's request for continuance of the status conference set in this matter for September 20, 2016, at 1:00 p.m. will be denied as moot. However, based on the disposition of Item #2 below, the status conference will be continued for 60 days.

The court shall enter an appropriate minute order.

2. 12-35604-B-13 LASHUNDA CORMIER
16-2129 EAT-1
CORMIER V. NATIONSTAR MORTGAGE ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION FOR A MORE DEFINITE STATEMENT
7-25-16 [8]

Tentative Ruling: Defendant Nationstar Mortgage, LLC's Motion to Dismiss Complaint or, In the Alternative, For a More Definite Statement; Memorandum of Points and Authorities In Support Thereof has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to dismiss and grant the motion for a more definite statement.

Introduction

This adversary proceeding concerns real property located at 6315 Lochinvar Way, Sacramento, California. That property is the residence of Plaintiff Lashunda Cormier ("Plaintiff"). Plaintiff is also the debtor in the underlying chapter 13 case, no 12-35604. As explained below, the actual defendant is unknown.

This adversary proceeding arises from a purported failure by a "creditor" (that may or may not also be a defendant) to release a second deed of trust on the Lochinvar property upon debtor's completion of payments under her confirmed Chapter 13 plan. Plaintiff also alleges related state law claims.

(Purported) Defendant Nationstar Mortgage, LLC ("Nationstar") moves for dismissal of the complaint under Federal Rule of Civil Procedure ("Civil Rule") 12(b)(6) (applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7012(b)) or for a more definite statement under Civil Rule 12(e) (applicable by Bankruptcy Rule 7012(b)). Plaintiff filed a written opposition to the motion. No reply was filed.

The court has reviewed Nationstar's motion and the Plaintiff's opposition. The court has also reviewed and takes judicial notice of the docket in this adversary proceeding and in the underlying Chapter 13 case.

After reviewing numerous documents filed in this adversary proceeding and in the underlying Chapter 13 case, the court is unable to discern who the complaint names, or attempts to name, as a defendant. In other words, the court is unable to discern the party against whom relief is sought. Either the wrong defendants are named on the face of the complaint, the defendants named in the complaint (which differ entirely from the defendants named on the face of the complaint) were not served with summons and the complaint, and/or parties that need to be named as defendants were not named on or in the complaint and were not served with a summons and the complaint. As a result, the complaint fails to comply with Civil Rule 8(a) (applicable by Bankruptcy Rule 7008). Therefore, although the motion to dismiss will be denied, for the reasons explained below the motion for a more definite statement will be granted.

Discussion

Civil Rule 12(e) provides: "A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). A motion for a more definite statement is "proper only where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted." *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994) (citation omitted).

Who are the Defendants?

The caption of the complaint states that the defendants are Nationstar and U.S. Bank. The adversary cover sheet also identifies Nationstar and U.S. Bank as the defendants. Summons was issued in the name of Nationstar and U.S. Bank. And Nationstar and U.S. Bank were served with the summons and the complaint. By all accounts, that should make Nationstar and U.S. Bank defendants in this adversary proceeding. That is, until one actually reads the complaint.

Lines 17-18 in paragraph 10 on page 3 of the complaint state that "[t]he Defendants are BAC Home Loans Servicing, dba Bank America [sic], N.A." Lines 21-24 in paragraphs 15 and 16 on page 4 of the complaint again state that the defendant is Bank of America, but switch the name of the servicer from BAC to Nationstar. There is no explanation (or allegation) as to how, if at all, BAC is Nationstar and/or U.S. Bank is Bank of America (or vica versa). Moreover, the docket does not reflect service of summons and complaint on either BAC or Bank of America.

To make matters worse, Plaintiff's opposition states that "defendant" (not identifying which one) filed a proof of claim in the underlying Chapter 13 case. The opposition also states that Plaintiff entered into a stipulation with a "creditor" (a newly-introduced term referring to some party that may or may not be a defendant) for the treatment of a claim secured by the second deed of trust at issue in this adversary proceeding. According to the claims register in the underlying Chapter 13 case, the referenced proof of claim is Claim No. 25 filed by yet another entity - Bank of New York Mellon Trust Company, N.A., fka The Bank of New York Trust Company, N.A., Successor in Interest to J.P. Morgan Chase Bank N.A., as Trustee for the Holders of the MLMI Surf Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-BC4. The referenced stipulation is between Plaintiff and the same entity. None of these entities are named on or in the complaint, none were served with summons and the complaint, and there is no explanation how, if at all, these entities are related to the entities named on and in the complaint or why they are not.

Although Rule 12(e) motions are generally viewed with disfavor and rarely granted, *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1122 (E.D. Cal. 2012) (citation omitted), they are "more likely to be granted where the complaint is so general that ambiguity arises in determining the nature of the claim or the parties against whom it is being made," as is the case here. *True v. Am. Honda Motor Co., Inc.*, 520 F. Supp. 2d 1175, 1180 (C.D. Cal. 2007) (quoting *Sagan*, 874 F. Supp. at 1077); *see also Aguirre v. San Leandro Police Dep't*, 2011 WL 738292, at *4-5 (N.D. Cal. Feb. 22, 2011)

(granting defendants' motion for a more definite statement and requiring that plaintiff list each claim and specify which defendant is being sued and the specific conduct of each defendant that violated his rights).

Therefore, based on the foregoing,

It is ordered that the motion to dismiss under Civil Rule 12(b)(6) is denied and the motion for a more definite statement under Civil Rule 12(e) is granted.

It is further ordered that Plaintiff shall file an amended complaint within 21 days of the date of the entry of the court's order granting the Civil Rule 12(e) motion.

It is further ordered that any amended complaint shall cure the deficiencies noted above and identify which claims apply to which defendant(s).

The court shall enter an appropriate minute order.

3.	15-29232-B-13 JPJ-1	MARISTELA VILLEZAR Mikalah R. Liviakis	OBJECTION TO CLAIM OF GALWAY FINANCIAL SERVICES, CLAIM NUMBER 10 8-3-16 [34]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Galway Financial Services and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Galway Financial Services ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $315.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was April 6, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Creditor's Proof of Claim was filed May 9, 2016.

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

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

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

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

Id. at 1432.

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

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

The court shall enter an appropriate minute order.

4. 16-23233-B-13 STACY DEL RIO — MOTION TO CONFIRM PLAN
TAG-1 Ted A. Greene — 8-5-16 [28]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $405.00, which represents approximately 1 plan payment. 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, feasibility cannot be determined pursuant to 11 U.S.C. § 1325(a)(3), (4), or (6) and § 1325(b)(1)(B) because the terms of the plan are unclear. Section 1.03 of the plan indicates that the plan length is 58 months but the Additional Provisions of the plan indicate that the plan length is 60 months.

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

The court shall enter an appropriate minute order.

5. 16-23333-B-13 ALFONSO/CAMMIE MACIEL — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 8-4-16 [36]

DEBTOR DISMISSED: 08/31/2016

Final Ruling: No appearance at the September 20, 2016, hearing is required.

This case was dismissed on August 31, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

6. 16-24635-B-13 MICHAEL/CLARA LANGTON — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
KHS-2 Scott J. Sagaria — 8-19-16 [13]

2015-3 IH2 BORROWER, LP VS.

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion for Relief From the Automatic Stay Provisions of 11 USC § 362(a); Points and Authorities was originally set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Although no opposition was filed by the Debtors, Joint Debtor Clara Langton did appear before court on September 6, 2016, to object to the motion. The court vacated its final ruling on September 6, 2016, and continued this matter to September 20, 2016, to allow the Debtors to oppose the motion and assume the lease. Debtors filed a first amended plan on September 12, 2016, assuming the lease and this was served on Movant 2015-3 IH2 Borrower L.P. Movant has not filed a response.

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

2015-3 IH2 Borrower L.P. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5383 Elderdown Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Jessy Nanoff to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property and that it entered into a written lease agreement with Debtors. *See* dkts. 15, 16. Movant seeks to proceed with the unlawful detainer action filed in state court on July 29, 2016. Movant filed this action 14 days after the Debtors had filed their bankruptcy petition on July 15, 2016.

Although no opposition was filed in connection with this motion, the Debtors' first amended plan filed September 12, 2016, provides for the curing of post-petition rent at Section 6 Additional Provisions. The Additional Provisions state that the Trustee shall begin making monthly disbursements in the amount of $250.00 to IH2 Borrower L.P. beginning September 2016 and continue until the amount of $2,010.00 in post-petition delinquent rent for the month of July 2016 is cured. Additionally, the Additional Provisions state that should the Debtors default on plan payments, the Movant may file an ex parte request for relief from the automatic stay and that the stay should be granted.

Discussion

Movant presents evidence that it is the owner of the Property and has provided a copy of the lease agreement entered into by the Debtors. Dkt. 16. Although there is no equity in the property for either the Debtors or the Estate, the Debtors have assumed the lease in their plan.

Section 1322 of the Bankruptcy Code allows a debtor to assume an unexpired lease, such as for a residential property. This right is subject to the provisions of § 365. Section 365(b)(1) provides that, if there has been a default in the lease, a debtor may not assume such lease unless the debtor:

> (A) cures, or provides adequate assurance that the [debtor] will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or

lease.

11 U.S.C. § 365(b)(1). Under their lease, the Debtors were required to pay $2,010.00 per month. The Debtors defaulted on their July 2016 rent payment in the amount of $2,010.00.

Under the amended plan, the Debtors propose to cure the arrearage by making additional monthly plan payments of $250.00 per month until the delinquency amount of $2,010.00 has been satisfied. By the court's calculation, the Debtors' cure would take just over 8 months.

Under § 365(b)(1), a debtor must cure the arrearage "promptly" if the plan is to be confirmable. *In re Flugel*, 197 B.R. 92, 97 (Bankr. S.D. Cal. 1996). Courts have generally found that a cure of less than one year for a residential property is prompt under § 365(b). *See In re Yokley*, 99 B.R. 394 (Bankr. M.D. Term. 1989) (rejecting a proposed 2-year cure to cure arrearage owed on debtor's residential lease); *In re Trusty*, 189 B.R. 977 (Bankr. N.D. Ala. 1995) (allowing debtor's 1 year to cure a rent-to-own agreement). Based on the facts in this case, the court finds that a 8-month cure is a prompt cure of the arrearage owed to Movant.

The court also finds that the Movant's filing of the unlawful detainer action 14 days after the bankruptcy commenced was a wilful violation of the automatic stay.

The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[,]" 11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

Movant violated the automatic stay when it filed a post-petition unlawful detainer action against the Debtors two weeks after the Debtors filed their Chapter 13 petition. Filed in violation of the automatic stay, at a minimum, the Movant's post-petition unlawful detainer action is void. *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009); *see also Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081-82 (9th Cir. 2000) (en banc). The court will not grant relief to allow Movant to continue to prosecute a void action and Movant has made no showing annulment in warranted.

Movant states that it learned of the Debtors' bankruptcy filing on July 29, 2016 - the same day it filed the unlawful detainer action. However, Movant does not explain if it learned of the Debtors' bankruptcy filing before or after the unlawful detainer action was filed. If the Movant learned of the Debtors' bankruptcy filing after it filed the unlawful detainer action, the unlawful detainer action is still void. For voidness purposes, it makes no difference whether or not Movant was unaware of the automatic stay when it took the actions that violated the stay. *Carter v. Barber (In re Carter)*, 2016 WL 1704719 at *4 (9th Cir. BAP 2016) (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1188 (9th Cir. 2003)). If, on the other hand, Movant knew of the bankruptcy filing before it filed the unlawful detainer action and filed that action anyway then the Movant willfully violated the automatic stay. *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002). In cases of a willful violation, the injured individuals shall recover actual damages, including costs and attorney's fees. *See* 11 U.S.C. § 362(k)(1); *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 589 (9th Cir. BAP 1995).

Therefore, the Movant is ordered to show cause, in writing, why it should not be held liable for damages under § 362(k) for wilful violation of the automatic stay based on the following:

7/01/16 - Debtors fail to pay (pre-petition) rent

7/06/16 - Movant serves Debtors with 3-day notice to quit
7/15/16 - Debtors file Chapter 13 petition
7/29/16 - Movant commences unlawful detainer action

Movant's written response shall be due October 4, 2016. Debtors may submit optional response by October 11, 2016. The Movant's optional reply will be due October 18, 2016. A hearing on the order to show cause will be held on November 1, 2016, at 1:00 p.m.

The court shall enter an appropriate minute order.

7. 16-23244-B-13 CAMILO VILLEGAS — MOTION TO CONFIRM PLAN
MAC-1 Marc A. Carpenter — 8-8-16 [23]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion for Confirmation of Debtors' First Amended Chapter 13 Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 8, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

8. 15-29445-B-13 KEVIN MITCHELL MOTION TO MODIFY PLAN
SJS-3 Scott J. Sagaria 8-15-16 [56]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) 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 evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 15, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

9. 16-22447-B-13 VIRGIL EVANS
MJ-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-16 [58]

HSBC BANK USA, N.A. VS.

DEBTOR DISMISSED: 08/02/2016

Final Ruling: No appearance at the September 20, 2016, hearing is required.

This case was dismissed on August 20, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

10. 11-25149-B-13 RUSSEL/TERRI YACAPRARO — MOTION FOR EXEMPTION FROM 1328 CERTIFICATE REQUIREMENT AS TO DECEASED DEBTOR, RUSSEL DEAN YACAPRARO 9-1-16 [76]
SJS-3 Scott J. Sagaria

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Notice of Death and Request for Waiver of the Certification Requirements for Entry of Discharge in a Chapter 13 Case [11 U.S.C. § 1328] is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion.

Debtor Russel Yacapraro passed away on November 18, 2012. Prior to his death, the Debtor completed his plan payments and filed a certification of completion of a post-petition course on personal financial management. However, the Debtor is unable to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

The court shall enter an appropriate minute order.

11. 16-22950-B-13 JOYCELYN/FRANCISCUS VAN HOOF
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
8-8-16 [28]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion to Confirm Debtors' First Amended Plan Filed August 8, 2016, has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 8, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

12. 16-21258-B-13 LONNEL WALKER MOTION TO MODIFY PLAN
BLG-1 Pauldeep Bains 7-29-16 [42]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on 7/29/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, feasibility cannot be fully assess pursuant to 11 U.S.C. § 1325(3) or (6) because the plan terms are unclear. The Additional Provisions of the plan state that the plan payments are $300.00 per month for months 5 and 6, but the Motion and Declaration filed in support of the plan state that payments are $250.00 per month for months 5 and 6.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $600.00, which represents approximately 1 plan payment. 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).

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

The court shall enter an appropriate minute order.

13. 16-24161-B-13 ALONZO/NORMA MUNGUIA MOTION TO CONFIRM PLAN
WSS-3 W. Steven Shumway 8-5-16 [33]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion for Confirmation of Amended Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 5, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

14.	15-28163-B-13 JPJ-2	JOHN LEIJA AND SYLVIA REYES Catherine King	OBJECTION TO CLAIM OF JH PORTFOLIO DEBT EQUITIES, LLC, CLAIM NUMBER 4 7-27-16 [58]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

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

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

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of JH Portfolio Debt Equities, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of $2,024.59. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about December 29, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 20, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court shall enter an appropriate minute order.

15. 16-21768-B-13 COLETTE MONTGOMERY MOTION TO CONFIRM PLAN
GTB-2 George T. Burke 8-8-16 [54]

DEBTOR DISMISSED: 09/06/2016

Final Ruling: No appearance at the September 20, 2016, hearing is required.

This case was dismissed on September 6, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

16. 15-22670-B-13 DINAH SMITH
JPJ-3 Eric W. Vandermey

OBJECTION TO CLAIM OF BALANCE CREDIT C/O PERITUS PORTFOLIO SERVICES, CLAIM NUMBER 10
8-3-16 [35]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Balance Credit c/o Peritus Portfolio Services and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Balance Credit c/o Peritus Portfolio Services ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $446.74. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 29, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Creditor's Proof of Claim was filed June 29, 2016.

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

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

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

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

Id. at 1432.

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

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

The court shall enter an appropriate minute order.

17. 11-36873-B-13 MARTY SHIRO
RAC-3 Richard A. Chan

SUGGESTION OF DEATH AND MOTION FOR WAIVER OF 1328 REQUIREMENTS
8-18-16 [47]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Suggestion of Death and Motion for Waiver of 11 U.S.C. § 1328 Requirement 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

The Debtor passed away on May 3, 2016. Prior to her death, the Debtor filed a certification of completion of a post-petition course on personal financial management. The Debtor's sister, Janie Leesha, continued to make payments on behalf of Debtor in accordance with the terms of the confirmed plan and the Trustee filed a Notice to Debtor of Completed Plan Payments and of Obligation to File Documents. However, the Debtor is unable able to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

The court shall enter an appropriate minute order.

18. 14-29375-B-13 JAMES FETTY MOTION TO MODIFY PLAN
RJ-7 Richard L. Jare 8-16-16 [100]

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

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $600.00, which represents approximately 1 plan payment. 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).

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

The court shall enter an appropriate minute order.

19. 13-35778-B-13 FRANK/JOSIE OLIVAS MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 8-15-16 [22]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 15, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

20. 11-37392-B-13 CHARLIE/CHRISTINA BOGGS
RAC-2 Richard A. Chan
Thru #21

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT
8-18-16 [51]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion to Avoid Judicial Lien 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of State of California Employment Development Department ("Creditor") against the Debtors' property commonly known as 1718 Deborah Lane, Marsyville, California ("Property").

A judgment was entered against Debtor Charlie Boggs in favor of Creditor in the amount of $1,282.50. An abstract of judgment was recorded with Sacramento County on June 18, 2010, which encumbers the Property. According to amended Schedule D filed on August 16, 2016 (which amends Schedule D filed on July 15, 2011) there are no superior liens recorded against this property. Although the Debtors have filed schedules as an exhibit, these have never been filed as amended schedules with the court.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $90,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

Utilizing the amended schedules and after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is equity to support the judicial lien. Therefore, the fixing of this judicial lien does not impair the Debtors' exemption of the real property and its fixing is not avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate minute order.

21. 11-37392-B-13 CHARLIE/CHRISTINA BOGGS
RAC-3 Richard A. Chan

MOTION TO AVOID LIEN OF CITIFINANCIAL SERVICES, INC.
8-18-16 [56]

Final Ruling: No appearance at the September 20, 2016, hearing is required.

The Motion to Avoid Judicial Lien 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will

be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of Citifinancial Services, LLC ("Creditor") against the Debtors' property commonly known as 1718 Deborah Lane, Marsyville, California ("Property").

A judgment was entered against Debtor Charlie Boggs in favor of Creditor in the amount of $1,282.50. An abstract of judgment was recorded with Sacramento County on August 23, 2010, which encumbers the Property. According to amended Schedule D filed on August 16, 2016 (which amends Schedule D filed on July 15, 2011) there are no superior liens recorded against this property. Although the Debtors have filed schedules as an exhibit, these have never been filed as amended schedules with the court.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $90,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

Utilizing the amended schedules and after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is equity to support the judicial lien. Therefore, the fixing of this judicial lien does not impair the Debtors' exemption of the real property and its fixing is not avoided subject to 11 U.S.C. § 349(b)(1)(B).

Additionally, the motion is denied without prejudice for defective service. Debtors served the attorney for Citifinancial Services, LLC, but there is no indication that the attorney appeared in the case for Citifinancial. Therefore, service must be certified under 7004(h) or at least as required by 7004(b)(3) if not a FDIC institution.

The court shall enter an appropriate minute order.

22. 16-25894-B-13 ROGER/JEAN VILLARREAL MOTION TO EXTEND AUTOMATIC STAY
RHM-1 Robert Hale McConnell 9-1-16 [8]

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on July 26, 2016, after Debtors failed to timely file documents (case no. 16-24515, Dkt. 8). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtors assert that they failed to file required documents because they relied on information provided to them from online company Shore View Financial. Shore View Financial was retained by the Debtors to help them lower their mortgage interest rate. Chris McCallister from that firm provided the Debtors with various advice including stopping payments to their lender so that they would default and qualify for a home loan modification. When the Debtors' primary residence and an additional rental house was placed into foreclosure, Mr. McCallister advised the Debtors to file a Chapter 13 petition. However, Debtors assert that they did not know what else they needed to do in their bankruptcy and Mr. McCallister did not provide the Debtors with any additional information. In the present case, the Debtors believe their plan is likely to succeed because they have retained an attorney who is advising them of their duties and responsibilities as debtors. Additionally, Debtors' plan proposes 100% payment to all unsecured creditors, the curing of the arrears on their mortgage, and payment of Trustee's fees and balance of attorney's fees.

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

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

The court shall enter an appropriate minute order.

23. 16-20613-B-13 URAL THOMAS
LBG-2 Lucas B. Garcia
Thru #24

CONTINUED EVIDENTIARY HEARING RE: MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
7-15-16 [79]

Tentative Ruling: This matter was continued from August 16, 2016, and again from September 6, 2016, by stipulation. The Motion to Value Secured Portion of Claim of Wells Fargo Bank, N.A., dba WFDS has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to dismiss the motion as moot. The Debtor and Wells Fargo Bank, N.A., dba WFDS entered into a stipulation on September 19, 2016, valuing the 2012 Chevy Camaro V6 at $14,248.00.

The court shall enter an appropriate minute order.

24. 16-20613-B-13 URAL THOMAS
LBG-3 Lucas B. Garcia

CONTINUED EVIDENTIARY HEARING RE: MOTION TO CONFIRM PLAN
7-15-16 [73]

Tentative Ruling: This matter was continued from September 6, 2016, to be heard in conjunction with the evidentiary hearing on the motion to value collateral of Wells Fargo Bank, N.A. The Motion to Confirm Second Amended Chapter 13 Plan Dated July 15, 2016, has been set for hearing on the 42-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)(ii) 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 by Wells Fargo Bank, N.A. and the Chapter 13 Trustee.

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

First, confirmation of the plan depends on the outcome of the evidentiary hearing regarding the valuation of a 2012 Chevy Camaro V6 of Wells Fargo Bank, N.A. The Debtor and Wells Fargo entered into a stipulation valuing the vehicle at $14,248.00. The second amended plan does not provide for payment of Wells Fargo's secured claim.

Second, the plan does not properly account for all payments made to date and that the Calculation of Disposable Income (Form 12C-2) includes an impermissible expense for voluntary retirement contributions into a mandatory retirement plan that must be applied to make plan payments under 11 U.S.C. § 1325(b)(7).

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

The court shall enter an appropriate minute order.