UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 7, 2017 at 1:00 p.m.

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1. 17-25301-B-13 NLG-1 — TILLI RASHAD WILLIAMS, Aubrey L. Jacobsen — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 9-29-17 [22]

FIRST TECH FEDERAL CREDIT UNION VS.

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The Motion for Relief From the Automatic Stay 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). 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 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 for relief from stay.

First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Volkswagen Beetle, VIN ending in 2095 (the "Vehicle"). The moving party has provided the Declaration of Heather Anderson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Anderson Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $1,284.73 in post-petition payments past due. The Declaration also states that the Debtor will surrender the Vehicle as provided for in Class 3 of the plan.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $29,279.62, as stated in the Anderson Declaration, while the value of the Vehicle is determined to be $15,597.00, as stated in Schedules B and D filed by Debtor.

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. Moreover, the Debtor has indicated its intent to surrender the Vehicle.

The court shall issue an order terminating and vacating the automatic stay to allow First Tech Federal Credit Union, and 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 court will enter an appropriate minute order.

2. 17-25204-B-13 PAMELA JOHNSON
BLG-1 Chad M. Johnson

MOTION TO CONFIRM PLAN
9-22-17 [12]

Tentative Ruling: The Motion to Confirm First Amended Plan Filed on 9/22/17 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 confirm the first amended plan provided that the order confirming increase monthly plan payments to provide for the full claim of Global Lending Services LLC.

Objecting creditor Global Lending Services LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $2,490.52 in pre-petition arrearages and a secured claim of $22,709.31. 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) & 1325(a)(5)(B).

Creditor also opposes the interest rate of 4.5% as proposed in the Debtor's plan. Creditor asserts that it should receive a rate of at least 6.0% by applying the national prime rate of interest and adjusting the rate upward for risk. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

Debtor has filed a response agreeing to increase the creditor's claim to $22,709.31 per the filed proof of claim but objects to the increased interest rate and states that the Creditor has not satisfied its burden of showing the increased risk factors. The court agrees that the Creditor has not satisfied this burden.

Provided that the order confirming increase the claim of Global Lending Services LLC to $22,709.31, increase the monthly dividend paid to Creditor to $423.37, and increase monthly plan payments to $615.00, the amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

3. 17-23108-B-13 CARRIE LOUIS-SANTOS MOTION TO CONFIRM PLAN
RS-1 Richard L. Sturdevant 9-25-17 [38]

Tentative Ruling: The Motion to Confirm the Amended 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 amended plan.

First, the Debtor failed to disclose the filing of a previous case (no. 10-35060) in her petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Second, the amount of attorney's fees is unclear. The plan, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, and the Disclosure of Compensation all show that Debtor's counsel was paid $1,445.00 prior to the filing of the petition. The Statement of Financial Affairs at Question 16 shows that the counsel was paid $2,555.00 prior to the filing of the petition.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,256.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,263.00 will also be due. 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).

Fourth, the plan proposes an impermissible modification of Central Loan Admin & R's claim secured only by a security interest in the Debtor's principal residence and, therefore, the plan does not comply with 11 U.S.C. § 1322(b)(2). Additionally, the plan does not specify a cure of the post-petition arrearage owed to Central Loan Admin & R for months June 2017, July 2017, and September 2017, including a specific post-petition arrearage amount, interest rate, and monthly dividend. Therefore, § 2.08(b) cannot be fully complied.

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

The court will enter an appropriate minute order.

4.	17-25509-B-13 JPJ-1	DONNETTE DESANTIS Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 10-11-17 [21]

CASE DISMISSED: 11/01/17

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The case having been dismissed on November 1, 2017, the court's decision is to overrule the objection as moot.

The court will enter an appropriate minute order.

5. 17-24413-B-13 EILEEN AIELLO
MOH-1 Michael O'Dowd Hays

MOTION TO CONFIRM PLAN
9-22-17 [26]

CASE DISMISSED: 11/06/17

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The case having been dismissed on November 6, 2017, the court's decision is to deny the motion as moot.

The court will enter an appropriate minute order.

6. 17-26116-B-13 **Thru #7** — AARON/PHELICIA MCGEE — Mark W. Briden — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF CALIFORNIA, N.A. 10-18-17 [21]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 Banc of California, N.A. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $28,660.58 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed September 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

7. 17-26116-B-13 JPJ-1 — AARON/PHELICIA MCGEE — Mark W. Briden — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-17-17 [16]

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

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

The plan understates the priority claim of the Internal Revenue Service in Class 5 at $20,000.00. The Claim No. 1-1 filed by the IRS on October 13, 2017, shows $53,736.07 as the amount entitled to priority. Although the Debtors have filed a response stating that the IRS will amend their claim to reflect Debtors' 2016 tax return that was filed on October 12, 2017, no amendment has yet been filed by the IRS. The plan will take approximately 117 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Other issues raised by the Trustee appear to have been resolved.

First, Debtors' attorney states that he will reduce his monthly administrative payment from $500.00 per month to $350.00 per month in order for monthly plan payments to equal the aggregate of the monthly amounts plus the Trustee's fee.

Second, Debtors assert that they have provided the Trustee with the Class 1 Checklist and Authorization to Release Information. The Debtors have complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, Debtors assert that they have provided the Trustee with a detailed statement showing gross receipts and ordinary and necessary expenses associated with the operation of their business.

Fourth, Debtors assert that on October 17, 2017, an Amended Statement of Financial Affairs was filed listing the transfer of a 2007 International 466 D7 to Rusty Russel, who took over payments and paid off creditor Keystone Finance Corporation. Debtors assert that this obviates the need to pay the creditor $2,226.00 plus 4.0% in Class 2.

Nonetheless, because the claim for the IRS is understated and the length of the plan exceeds 60 months, the plan filed September 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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 75 days, the case will be dismissed on the Trustee’s ex parte application.

The court will enter an appropriate minute order.

8. 17-20925-B-13 JSO-1 — DANIEL FERRO, Jeffrey S. Ogilvie — CONTINUED OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST COMPANY, CLAIM NUMBER 1 9-21-17 [29]

Tentative Ruling: Debtor's Objection to Claim No. 1 of Deutsche Bank National Trust Company, as Certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to overrule the objection to amended Claim No. 1 of Deutsche Bank National Trust Company.

Deutsche Bank National Trust Company filed an amended proof of claim with an attached statement itemizing interest, fees, expenses, and other charges as required by Bankruptcy Rule 3001(c)(2)(A) on November 3, 2017. The proof of claim is properly filed and therefore is prima facie evidence of the validity and amount of the claim. *See* Fed. R. Bankr. P. 3001(f); *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (9th Cir. 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). The Debtor is the objecting party. However, the Debtor's current objection, particularly in the absence of any supporting declaration, does not meet that standard.

The Debtor's current objection is nothing more than an unsupported and unsubstantiated statement that the amount Creditor claims is owed is not owed and/or that Creditor's claim is not valid. "A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankruptcy Rule 3007-1(a).

Therefore, for the foregoing reasons, the Debtor's objection to Creditor's claim, as amended, is overruled, subject to 11 U.S.C. § 502(j) and Bankruptcy Rule 3008.

The court will enter an appropriate minute order.

9. 17-23827-B-13 HEATHER BUCHFIRER
JHW-1 Mohammad M. Mokarram

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-2-17 [28]

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The Motion for Relief From the Automatic Stay 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). 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 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 for relief from stay.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Dodge Ram 2500, VIN ending in 9506 (the "Vehicle"). The moving party has provided the Declaration of Tiffanie Daniels to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Daniels Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $2,106.26 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $39,384.15, as stated in Claim No. 4, while the value of the Vehicle is determined to be $40,000.00, as stated in Schedules B and D filed by Debtor.

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 TD Auto Finance LLC, and 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 not waived pursuant to Creditor's withdrawal of that request. *See*

dkt. 35.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

10. 17-25734-B-13 **Thru #11** — REX MORRISON, Yelena Gurevich — OBJECTION TO CONFIRMATION OF PLAN BY MATRIX FINANCIAL SERVICES CORPORATION, 10-12-17 [20]

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

The court's decision is to overrule the objection as moot.

Subsequent to the filing of Matrix Financial Services Corporation's objection, the Debtor filed an amended plan on October 31, 2017. The earlier plan filed August 29, 2017, is not confirmed.

The court will enter an appropriate minute order.

11. 17-25734-B-13 JPJ-1 — REX MORRISON, Yelena Gurevich — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 10-12-17 [16]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on October 31, 2017. The earlier plan filed August 29, 2017, is not confirmed.

The court will enter an appropriate minute order.

12. 16-26847-B-13 MARISSA BOYD
TLA-1 Thomas L. Amberg

MOTION TO MODIFY PLAN
10-3-17 [34]

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The Motion to Confirm 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 Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on October 3, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. 16-26456-B-13 THOMAS SWANSON MOTION TO MODIFY PLAN
HLG-1 Kristy A. Hernandez 9-26-17 [22]

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan Filed on September 22, 2017, 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 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 September 22, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

14. 17-26760-B-13 INGRID EBELING — MOTION TO EXTEND AUTOMATIC STAY
HLG-1 Kristy A. Hernandez — 10-16-17 [10]

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.

Debtor seeks 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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 25, 2017, due to failure to make plan payments (case no. 17-30542, Northern District of California). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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 Debtor asserts that she fell behind on her previous plan payments because her car experienced mechanical problems. Debtor states that the car problems are now resolved and that she will perform her duties under the plan for her case to succeed.

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 court will enter an appropriate minute order.

15. 17-21962-B-13 SUANNE GRANDERSON — MOTION TO CONFIRM PLAN
GEL-2 Gabriel E. Liberman — 9-22-17 [44]

Final Ruling: No appearance at the November 7, 2017, hearing is required.

The Motion to Confirm 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 July 12, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

16. 16-20763-B-13 LAWRENCE/CHYANNE MICALLEF MOTION TO MODIFY PLAN
WW-2 Mark A. Wolff 10-11-17 [44]

Final Ruling: No appearance at the November 7, 2018, hearing is required.

The Motion to Confirm the Modified Plan has not 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). Only 27 days notice was provided. The court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

17. 17-25663-B-13 KIMBERLY REMMERT
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-12-17 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $50.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $50.00 will also be due. 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 not amended her schedules to reflect that she did earn income in the last 6 months and to list a previous bankruptcy (case no. 16-22110) as requested by the Trustee. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 521(a)(3) and §§ 1325(a)(3) and (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 plan payment in the amount of $50.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $57,115.04. The plan does not comply with Section 4.02 of the mandatory form plan.

Fifth, the plan contains an additional provision that the Debtor will pay a lump sum amount within the first 12 months in the amount of $269,536.75 to complete the plan. There is no evidence that the Debtor has hired a real estate agent to sell the house, has listed the house for sale, or that selling the house within this timeframe is feasible. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

18. 12-42166-B-13 DONALD/KATHLEEN VALENTINE MOTION TO SELL
MS-1 Mark Shmorgon 9-27-17 [59]

Tentative Ruling: The Motion to Sell Real Property 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). The defaults of the non-responding parties are entered.

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 237 Grand Oak Drive Oroville, California ("Property").

Proposed purchasers Kambrin E. Tinkle and Sharon L. Tinkle have agreed to purchase the Property for $265,000.00. Debtors assert that the sale price represents a fair value for the Property, the sale is all cash, the sale is an arm's length transaction, and all lien holders and other creditors with an interest encumbering the Property shall be paid in full upon completion of the sale. The transaction will require the Debtors to contribute $850.00 to close the sale and there will be no proceeds available to the bankruptcy estate. Debtors state that they seek to complete this sale because the interest rate on the rental property will soon adjust, which will cause the rental property to no longer cash flow.

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

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

The court will enter an appropriate minute order.

19. 16-26567-B-13 DANIEL/PATRICIA FUSCO MOTION TO MODIFY PLAN
ALF-1 Ashley R. Amerio 9-25-17 [39]

Final Ruling: No appearance at the November 7, 2017, hearing is required.

Debtors' 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 September 25, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

20. 16-25470-B-13 MICHAEL HANKS MOTION TO MODIFY PLAN
MET-4 Mary Ellen Terranella 9-28-17 [67]

Final Ruling: No appearance at the November 7, 2018, hearing is required.

The Motion to Modify 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 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 November 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

21.	15-29773-B-13 PGM-7	CHARLES HUGHES AND VIRA EISON Peter G. Macaluso	MOTION TO MODIFY PLAN 9-28-17 [101]

JOINT DEBTOR DISMISSED:
10/04/2017

Final Ruling: No appearance at the November 7, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on September 28, 2017, 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 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 September 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

22. 17-25575-B-13 JPJ-1 — ORACIO QUEZADA, Mark A. Wolff — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-12-17 [37]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 plan contains an additional provision that the Debtor will pay a lump sum amount in month 10 in the amount of $230,000.00 to complete the plan. There is no evidence that the Debtor has hired a real estate agent to sell the house, has listed the house for sale, or that selling the house within this timeframe is feasible. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,225.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,225.00 will also be due. 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 plan filed September 6, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

23. 17-25875-B-13 JPJ-1 — ROBERT/JENNIFER FINE, Bruce Charles Dwiggins — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-17-17 [20]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the plan contains neither the Debtors' attorney's original wet signature nor electronic signature. The plan does not comply with Local Bankr. R. 9004-1(c)(1)(B) and Fed. R. Bankr. P. 9011(a).

Third, the plan cannot be effectively administered because it includes a handwritten notation in Class 3 to "see 6.01" but there is no Additional Provisions or Section 6.01 appended to the plan.

Fourth, the Debtors have not fully and accurately provided all information required by the petition, schedules and Statement of Financial Affairs. The Debtors testified under oath at the meeting of creditors on October 12, 2017, that the debt of Timepayment Corp, LLC is a secure debt that is owed by the Debtors, is not a result of identify theft as stated in Schedule D, and that the collateral is equipment used in the Debtor's automobile detailing business. The plan does not appear to have 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).

The plan filed September 15, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

24. 15-23677-B-13 CYB-3 — FRANK SCRUGGS, Candace Y. Brooks — MOTION FOR COMPENSATION FOR CANDACE Y. BROOKS, DEBTOR'S ATTORNEY, 10-13-17 [70]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Application for Additional Attorney Fees 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 for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Candace Brooks ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 52. Applicant now seeks additional compensation in the amount of $2,125.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 73.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would request to short sale his real property, which required Applicant to communicate with three separate realtors at the direction of the Debtor, and that Debtor's spouse would faced a substantial reduction in income that required the filing of amended schedules and the modification of a plan.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$2,125.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

25. 17-25488-B-13 JPJ-1 — RUDY NELSON DELA VEGA, Candace Y. Brooks — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-12-17 [15]

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

Debtor's disposable income is not being applied to make payments to unsecured creditors and does not comply with 11 U.S.C. § 1325(b)(1)(B). The Debtor has taken various impermissible deductions on Form 122C-2.

Line 13 Marital Adjustment is in the amount of $1,403.00 for items that are already included as household expenses in the IRS Guidelines and are for the benefit of the household. Debtor's household expenses consist of home insurance, pet expenses, pest control, lawn, gym, solar, timeshare dues, student loans, and the non-filing spouse's voluntary retirement account.

Also Line 23 Optional Telephone and Telephone Services is in the amount of $278.00 but this same dollar amount is listed on Schedule J, Line 6c for "telephone, cell phone, internet, satellite, and cable services." Generally, expenses that are valid on Line 6c are specifically prohibited from inclusion on Line 23 of Form 122C-2. The Debtor has not clarified this deduction.

The plan filed August 18, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

26. 17-22198-B-13 EAS-2 ERIN VIEIRA-ANDERSON
Edward A. Smith

MOTION TO SET ASIDE DISMISSAL OF CASE
10-20-17 [42]

DEBTOR DISMISSED: 10/08/2017

Tentative Ruling: Debtor's Motion to Set Aside Dismissal of Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justifies the court vacating the order dismissing the case. Debtor asserts that an amended plan was not timely filed due to a calendaring error presumably by Debtor's counsel. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is not supported by both cause and excusable neglect. No consideration for the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.,* 507 U.S. 380 (1993), has been made to support excusable neglect. Debtor merely makes a general statement that it did to timely file an amended plan due to a clerical calendaring error.

Relief under Rule 60(b)(1) will be denied because the standard for excusable neglect has not been satisfied. In particular, Debtor's motion fails to adequately address any of the *Pioneer-Briones* factors, *i.e.,* (1) the danger of prejudice to any non-moving party if the dismissal is vacated, (2) the length of delay and the potential impact of that delay on judicial proceedings, (3) the reason for the delay, including whether the delay was within the reasonable control of the movant, and (4) whether the Debtor's conduct was in good faith. *Pioneer*, 507 U.S. at 395; *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). For that reason alone, Rule 60(b)(1) relief is not warranted. *See Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) ("The court would have been within its discretion [to deny relief] if it spelled out the equitable test and then concluded that [counsel] had failed to present any evidence relevant to the four factors.").

Nevertheless, the court has independently reviewed the *Pioneer-Briones* factors in the context of the Debtor's motion and the record before it. *See Lemoge v. U.S.*, 587 F.3d 1188, 1192 (9th Cir. 2009). Based on that review, the court is not persuaded that relief under Rule 60(b)(1) should be granted.

The motion fails to address the danger of prejudice to creditors if the dismissal order is vacated. When the case was dismissed the automatic stay terminated, which means nothing now precludes creditors from exercising their rights under applicable nonbankruptcy law. Vacating the dismissal does not necessarily reimpose the automatic stay. The Ninth Circuit is clear in that, once terminated, the automatic stay may only be reimposed through an adversary proceeding that requests injunctive relief under § 105(a). *In re Canter*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J. concurring) ("In order to have a vacated stay 'reimposed,' one must ordinarily file an adversary proceeding seeking an injunction under 11 U.S.C. § 105."). Under some circumstances, the stay may be revived when the order that terminated it is vacated. *See State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 & n.8 (10th Cir. 1996). However, the Debtor has not demonstrated or explained how that is applicable, if at all, in this case. Consequently, the first *Pioneer* factor weighs against Rule 60(b)(1) relief.

The second factor, the length of the delay and the potential impact of the delay on the Chapter 13 proceeds, also weighs heavily against Rule 60(b)(1) relief. This Chapter 13 case was initially filed on March 31, 2017. A confirmation hearing on the amended plan and motion to confirm it was filed the day *after* the case was dismissed and set for November 21, 2017. If the court were to vacate the dismissal order, by the time of that confirmation hearing this case will have been pending for 8 months without a confirmed plan. Moreover, there is no guarantee that the court will confirm the Debtor's amended plan on November 21, 2017, or that the plan is even confirmable. And if the amended plan is not confirmed another 1-2 months will pass before another confirmation hearing is set. That would effectively put the Debtor in a Chapter 13 case without a confirmed plan for close to a year. Given that the Bankruptcy Code contemplates confirmation in a relatively short period of time, *see* 11 U.S.C. § 1324(b), "parking" the Debtor in a Chapter 13 case for nearly a year without a confirmed plan is unreasonable delay prejudicial to creditors. *See* 11 U.S.C. § 1307(c)(1).

The court is also not convinced that the Debtor has offered a plausible explanation of the reason for the delay that resulted in the dismissal of this case. The court sustained the Trustee's objection to confirmation of the Debtor's plan on June 6, 2017, and provided the Debtor with 75 days thereafter to confirm a plan. The Debtor did not file an amended plan until October 9, 2017, which is 125 days after the court entered its order denying confirmation, 50 days after the last day to confirm a plan, and 1 day after the case was dismissed for failure to comply with the order denying confirmation. Irrespective of the 75-day deadline and while the case was still pending, the Debtor does not explain why she failed to file any amended plan after the Trustee's objection was sustained and the plan filed March 31, 2017, was deemed non-confirmable. Given those circumstances, the court is convinced that the Debtor may have never filed an amended plan had she not been alerted of the case's dismissal. Accordingly, this third factor weighs against Rule 60(b) relief.

As to the fourth factor, the court does not see any bad faith associated with the Debtor's conduct.

In sum, on balance and upon consideration of the totality of the circumstances, the *Pioneer-Briones* factors overwhelmingly weigh against relief from the dismissal order under Rule 60(b)(1). Therefore, the Debtor's request for relief under Rule 60(b)(1) will be denied.

Relief under Rule 60(b)(6) will also be denied. A court may grant relief under Rule 60(b)(6) for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. Relief under Rule 60(b)(6) is limited to errors or actions beyond the party's control. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006); *Cmty. Dental Serv. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 1996). The Debtor does not meet this standard insofar as the Debtor has not demonstrated how the failure to calendar the plan confirmation deadline was somehow outside her control or the control of her attorney.

CONCLUSION

For all the foregoing reasons, the Debtor's motion to vacate is denied without prejudice.

The court will enter an appropriate minute order.

27. 17-25899-B-13 CARLOS/ROBIN ROBLES — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Candace Y. Brooks — 10-12-17 [64]
Thru #28

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 two motions to value for Synchrony Bank. Those motions were heard and granted on October 24, 2017.

Second, Debtors' projected disposable income is not being applied to make payments to unsecured creditors and does not comply with 11 U.S.C. § 1325(b)(1)(B). The Debtor has taken various impermissible deductions on Form 122C-2.

Line 23 Optional Telephone and Telephone Services is listed as $682.00 but this same dollar amount is listed on Schedule J, Line 6c for "telephone, cell phone, internet, satellite, and cable services." Generally, expenses that are valid on Line 6c are specifically prohibited from inclusion on Line 23 of Form 122C-2. The Debtor has not clarified this deduction.

Also Line 33d Other Secured Debts states amounts $230.17 and $99.07. The Debtor has listed two secured debts: (1) Ford Motor Credit for a 2014 Ford Fiesta in the amount of $230.17 and (2) Toyota Financial Services for a 2016 Toyota Corolla in the amount of $99.07. The Ford loan is listed in Class 4 and states that Debtors' daughter will be making the payments, and the Toyota lease is being assumed in the plan but will be paid by Debtors' other daughter according to their testimony at the meeting of creditors. Since the Debtors are not making the payments to these creditors, they may not take the deduction on Form 122C-2.

Finally, Line 36 Projected Monthly Chapter 13 Plan Payment is incorrect. The correct plan payment should be $1,335.00 and, after the 5.8% trustee multiplier, the correct Average Monthly Administrative Expense should be $77.43.

With these impermissible deductions, the Debtors' monthly disposable income is $1,269.73 and they must pay no less than $76,183.80 to unsecured creditors. The plan pays only $20,327.25 to unsecured creditors.

The plan filed September 1, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

28. 17-25899-B-13 RCO-1 — CARLOS/ROBIN ROBLES, Candace Y. Brooks — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 10-2-17 [42]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $6,369.30 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed September 1, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.