

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

November 8, 2016 at 1:00 p.m.

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|----|--------------------------------|-----------------------|--------------------------------|
| 1. | <a href="#">14-22202</a> -B-13 | ROBERT/CAROLLYNN      | MOTION TO MODIFY PLAN          |
|    | SJS-2                          | PROVENZANO            | 9-30-16 [ <a href="#">27</a> ] |
|    |                                | Matthew J. DeCaminada |                                |

**Final Ruling:** No appearance at the November 8, 2016, hearing is required.

The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 30, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

November 8, 2016 at 1:00 p.m.

2. [16-22707](#)-B-13 RICHARD CRABTREE  
DBJ-2 Douglas B. Jacobs

MOTION TO CONFIRM PLAN  
9-22-16 [[57](#)]

**Tentative Ruling:** The Motion for Hearing on Confirmation of 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 second amended plan.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$2,245.67 and the Debtor must pay no less than \$134,740.20 to unsecured non-priority creditors. The plan appears to pay only \$18,264.30 to unsecured non-priority creditors.

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.

3. [16-25418](#)-B-13 BENJAMIN/BRANDEE AHLSON  
JPJ-1 Bruce Charles Dwigins  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
10-20-16 [[14](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the 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.

First, the Debtors did not appear at the meeting of creditors set for October 13, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$425.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$425.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan will take approximately 68 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).

Fourth, Debtor Benjamin Ahlson has failed to file a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1).

The plan filed August 17, 2016, 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.

4. [16-25930](#)-B-13 ANGELINA ROBINSON  
JPJ-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
10-20-16 [[29](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the 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). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for October 13, 2016, as required pursuant to 11 U.S.C. § 343.

Second, commencing in month 2, the plan payment in the amount of \$6,542.00 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 \$7,111.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan will take approximately 97 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).

Fourth, 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).

Fifth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's net income from rental property and/or operation of a business as listed on Schedule I Line 8a.

The plan filed September 19, 2016, 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.

5. [16-24534](#)-B-13 GLORIA/LOUIS OMANIA COUNTER MOTION TO DISMISS CASE  
RLG-1 Robert L. Goldstein 10-5-16 [[22](#)]  
**Thru #6**

**Tentative Ruling:** The motion will be denied as moot. The Trustee's counter motion to dismiss case relates to the first amended plan filed on September 12, 2016. The Debtors have subsequently filed a second amended plan on October 25, 2016. The confirmation hearing for the second amended plan is scheduled for December 13, 2016.

The court will enter an appropriate minute order.

6. [16-24534](#)-B-13 GLORIA/LOUIS OMANIA MOTION TO CONFIRM PLAN  
RLG-1 Robert L. Goldstein 9-22-16 [[17](#)]

**Tentative Ruling:** The Motion to Confirm First 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 deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed a second amended plan on October 25, 2016. The confirmation hearing for the second amended plan is scheduled for December 13, 2016. The first plan filed September 12, 2016, is not confirmed.

The court will enter an appropriate minute order.

7. [11-48548](#)-B-13 DALE/CARMEN LEAVER  
SDB-2 W. Scott de Bie

MOTION TO AVOID LIEN OF  
CITIBANK, N.A.  
10-11-16 [[47](#)]

**Final Ruling:** No appearance at the November 8, 2016, hearing is required.

The Debtors' Motion to Avoid Judicial Lien that Impairs Exemption to Which Debtors Are Entitled 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 to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtors' property commonly known as 1108 Cunningham Street, Vallejo, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$4,368.82. An abstract of judgment was recorded with Solano County on November 28, 2011, which encumbers the Property. All other liens recorded against the Property total \$309,578.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$260,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of \$23,250.00 on Schedule C.

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

The court will enter an appropriate minute order.

8. [12-33059](#)-B-13 MICHLE/DEBRA CAHOON  
SPB-2 Stanley P. Berman

MOTION TO SET ASIDE DISMISSAL  
OF CASE  
9-21-16 [[74](#)]

DEBTOR DISMISSED:  
08/24/2016  
JOINT DEBTOR DISMISSED:  
08/24/2016

**Tentative Ruling:** The Motion to Set Aside Dismissal of Chapter 13 Case (B.R. 9024, F.R.C.P. 60(b) has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). A response was filed by the Chapter 13 Trustee. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to vacate dismissal and further order the Debtors to return the \$4,529.00 refund that the Trustee had sent to the Debtors within five (5) days of the date of entry of the order.

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the case. Specifically, there was a misunderstanding between the Debtors and their attorney that caused counsel to believe that the Debtors wanted to dismiss their case. The Debtors had contacted their attorney to inquire about the possibility of securing a reverse-mortgage but did not intend for their case to be dismissed as the Debtors had stated in a voice message to counsel.

The Trustee has filed a response stating that should the court grant the motion to set aside the dismissal, that the court also order the Debtors to return the \$4,529.00 that the Trustee had sent as a refund to the Debtors. This refund amount represents all the funds that the Trustee was holding on the date the case was dismissed.

The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

#### **DISCUSSION**

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtors did not intend for their case to be dismissed and have actually already completed 80 percent of their Chapter 13 plan. The dismissal of the case would result in undue hardship for the Debtors since they will lose the advantages of a discharge in their case. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the case was dismissed due to counsel's misunderstanding of Debtors' voice message. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtors, the court will grant the motion to vacate dismissal of the case.

It is further ordered that the Debtors be required to return to the Trustee the refund in the amount of \$4,529.00 within five (5) days of the date of entry of the order. If the Debtors fail to do so, the case shall again be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

9. [11-48070](#)-B-13 DOUGLAS/TANA TOLSON  
RLC-1 Stephen M. Reynolds

MOTION TO APPROVE LOAN  
MODIFICATION  
9-23-16 [[77](#)]

DEBTOR DISMISSED:

10/24/2016

JOINT DEBTOR DISMISSED:

10/24/2016

**Final Ruling:** No appearance at the November 8, 2016, hearing is required.

This case was dismissed on October 24, 2016, after Debtors failed to obtain confirmation of a modified plan within 75 days of the date of the entry of the order dated July 22, 2016. Dkts. 74, 76. Therefore, the motion to approve loan modification is dismissed as moot.

The court will enter an appropriate minute order.



**Final Ruling:** No appearance at the November 8, 2016, hearing is required.

The Motion to Value Secured Claim of the Franchise Tax Board 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 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 the motion to value without prejudice.

Debtors motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by the Declaration of Martin J. Snezek. Debtors are the owners of various personal property consisting of a 2003 Ford Explorer 4D, a 2011 Chevy Tahoe 4D LT, a Franchi shot gun, a Remington shot gun, clothing, cash on hand, and a bank account with Chase Bank (collectively "Personal Property"). The Debtors seek to value the Personal Property at a replacement value of \$3,310.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. See *Fed. R. Evid. 701*; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

#### **Discussion**

The court finds issue with the Debtors' valuation of Personal Property. In particular, the Debtors' schedules indicate that the 2003 Ford Explorer 4D 2003 is valued at \$100.00. The court is not persuaded that this reflects the valuation that a retail merchant would charge, taking into account the condition of the vehicle. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The Debtors have not persuaded the court regarding their position for the value of the Personal Property, in particular the 2003 Ford Explorer. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm Second Modified Plan Dated September 26, 2016, 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 was filed by the Trustee and a response was filed by the Debtor.

The court's decision is to permit the requested modification and confirm the modified plan provided that the below issues are resolved by the date of the hearing on this matter.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$702.00, which represents approximately  $\frac{1}{2}$  of one plan payment. By the time this matter is heard, an additional plan payment in the amount of \$1,357.00 will also be due. The Debtor has filed a response stating that he will be current by the date of the hearing.

Second, because the Debtor failed to make the plan payment due September 25, 2016, the Trustee lacked sufficient funds to pay the post-petition contract installments to Evergreen Home Loans for the months of June, July, and September 2016 totaling \$3,131.70. The modified plan provides for a cure of only two post-petition installments totaling \$2,087.80. The modified plan does not specify a complete cure of the post-petition arrearage including the correct post-petition arrearage amount, interest rate, and monthly dividend. The Debtor has filed a response stating that he believes bringing his payments current will resolve this issue.

Third, the plan filed September 26, 2016, provides for treatment of the claim of Springleaf Financial in Class 3, but the motion states that the classification is changed to Class 6. The Debtor has filed a response stating that the classification written in the motion was a typographical error and that the classification as stated in the plan as Class 3 is correct.

If these issues are resolved, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

12. [16-22891](#)-B-13 DANIEL/NANCY BALAGUY  
DAO-2 Dale A. Orthner

CONTINUED MOTION TO CONFIRM  
PLAN  
8-16-16 [[42](#)]

**Tentative Ruling:** The Motion to Confirm First 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 deny the motion to confirm as moot and overrule the objection as moot.

This matter was continued from October 4, 2016, to allow Debtors to amend the means test. It appears that the Debtors have done so on October 27, 2016.

Nonetheless, since the October 4, 2016, confirmation hearing, the Debtors filed an amended plan on October 27, 2016. The confirmation hearing for the amended plan is scheduled for December 13, 2016. The earlier plan filed August 16, 2016, is not confirmed.

The court will enter an appropriate minute order.

13. [15-29496](#)-B-13 ANTHONY/HELEN CASACLANG MOTION TO MODIFY PLAN  
SDB-4 W. Scott de Bie 9-28-16 [[78](#)]

**Final Ruling:** No appearance at the November 8, 2016, hearing is required.

The 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 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 28, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

14. [16-25904](#)-B-13 ELIZABETH HUBER  
JPJ-1 Gerald B. Glazer

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
10-10-16 [[12](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was continued from November 1, 2016, to be heard after the continued § 341 meeting held on November 3, 2016. The Trustee's sole objection to confirmation of the plan filed September 1, 2016, was that the Debtor failed to provide the Trustee with proof of her social security number as required pursuant to 11 U.S.C. § 521(a)(3).

The matter will be determined at the scheduled hearing.

15. [16-20799](#)-B-13 JOHN SHAFER CONTINUED MOTION TO CONFIRM  
MET-3 Mary Ellen Terranella PLAN  
**Thru #16** 9-13-16 [[50](#)]

**Tentative Ruling:** The Motion to Confirm Plan filed September 13, 2016, was continued from November 1, 2016, to allow the Debtor to cure his delinquency. The issue regarding valuation of Internal Revenue Service's collateral has been resolved. The IRS submitted an amended proof of claim showing a valuation consistent with that provided by the Debtor.

The matter will be determined at the scheduled hearing.

16. [16-20799](#)-B-13 JOHN SHAFER CONTINUED COUNTER MOTION TO  
MET-3 Mary Ellen Terranella DISMISS CASE  
10-17-16 [[63](#)]

**Tentative Ruling:** This matter was continued from November 1, 2016, to be heard in conjunction with the continued motion to confirm plan at Item #15.

The matter will be determined at the scheduled hearing.

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

The court's decision is to sustain the objection.

Under Section 362(l)(3), the landlord may file an objection to one or both of the certifications that a debtor files pursuant to Sections 362(l)(1) and (2). The statute provides that the court shall conduct a hearing within 10 days of the filing and service of the objection by the landlord. The purpose of the hearing is to determine whether the certification to which the landlord has objected is true. If the objection is sustained, the exception to the automatic stay, Section 362(b)(22), is fully applicable and the landlord may recover possession of the residential property despite the filing of the petition. The clerk of the court must immediately serve upon the landlord and the debtor a certified copy of the court's order sustaining the landlord's objection.

On November 1, 2016, the court heard and sustained lessor John Tran's ("Movant") objection to certification of debtor. Movant had commenced an unlawful detainer action on July 12, 2016, against Leon Allen ("Debtor"). On August 5, 2016, judgment was entered in state court in favor of Movant. The judgment awarded possession of the subject premises located at 3801 Florin Road, Suites A-7 and A-8, Sacramento, California, to Movant. It was not until September 28, 2016, that Debtor filed the Chapter 13 petition (case no. 16-26445). That case was subsequently dismissed on October 17, 2016, for failure to timely file documents. Thereafter on October 19, 2016, the Debtor filed this bankruptcy case. Debtor included with the filing of his petition a Form 101A but failed to certify that he deposited 30-days worth of per diem rent with the court. By virtue of Debtor's failure to certify that he has deposited 30-days worth of per diem rent, the provisions of 11 U.S.C. § 362(b)(22) were applicable and as provided for by 11 U.S.C. §§ 362(l)(1)(A) and (B). Therefore, the Movant's objection was sustained by the court and the exception to the automatic stay § 362(b)(22) was fully applicable to allow Movant to recover possession of the real property.

On November 2, 2016, the Debtor filed an Amended Statement About an Eviction Judgment (Amended Form 101A) and checked the box indicating that he has deposited with the bankruptcy court clerk the rent that would be due during the 30-day period after the filing of the petition. Movant asserts that the Debtor has not deposited with the court the appropriate rent amount of \$5,000.00. Instead, the Debtor deposited only \$50.00 on November 2, 2016.

Although the Movant has not filed a declaration supporting its contention that the appropriate rent amount is \$5,000.00, the Movant has filed a "Complaint - Unlawful Detainer" and a "Standard Industrial/Commercial Multi-Tenant Lease" that both reflect a rent of \$5,000.00 per month. Dkt. 26, Exh. A.

The objection is sustained, the exception to the automatic stay, Section 362(b)(22), is fully applicable and lessor John Tran may recover possession of the real property commonly known as 3801 Florin Road, Suites A-7 and A-8, Sacramento, California.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.<sup>1</sup>

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<sup>1</sup> Movant's objection could also be sustained on alternative grounds. On November 1, 2016, the court sustained Movant's prior objection to the Debtor's initial certification. That made § 362(b)(22) effective immediately (as

The court will enter an appropriate minute order.

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opposed to upon entry of the subsequent order). See 11 U.S.C. 362(l)(3)(B)(i). Thus, as of November 1, 2016, there was no stay under § 362(a) in place. The Debtor's subsequent filing of an amended certification on November 2, 2016, would not revive the automatic stay. See *In re Canter*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002). To do that, the Debtor would need to file an adversary proceeding seeking injunctive relief under § 105(a), which he has not done.