UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: December 4, 2018
CALENDAR: 1:00 P.M. CHAPTER 13

PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 4, 2018 at 1:00 p.m.

---

1. 18-25801-B-13 APN-1 — ROBERT/TRINITY KIRK, Bruce Charles Dwiggins — MOTION FOR RELIEF FROM AUTOMATIC STAY, 10-29-18 [29]

TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling

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

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota 4Runner, VIN JTEBU5JRXH5446979 (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration provides testimony that Debtor has not made 1 post-petition payment, with a total of $1,064.67 in post-petition payments past due. Dkt. 31, p. 2. Movant also notes that debtors Robert and Trinity Kirk ("Debtors") proposed a Chapter 13 plan on September 13, 2018, that surrenders the Vehicle as a Class 3 claim. Dkt. 8, p. 4, § 3.09.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $55,307.24, as stated in the Spooner Declaration (dkt. 31, p. 3), while the value of the Vehicle is determined to be $40,000.00, as stated in Schedule A/B filed by Debtors. Dkt. 1, pp. 14.

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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors 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 Toyota Motor Credit Corporation, 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.

COUNSEL FOR THE MOVANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2. 16-22507-B-13 MARK/CAROL RHYNE — MOTION FOR RELIEF FROM AUTOMATIC STAY
RAS-1 Peter G. Macaluso — 9-21-18 [73]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling

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

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

Motion for Relief

Wells Fargo Bank, National Association, successor by merger to Wells Fargo Bank Minnesota, National Association, as Trustee f/k/a/ Norwest Bank Minnesota, National Association, as Trustee for Amresco Residential Securities Corporation Mortgage Loan Trust 1998-3 ("Movant"), seeks relief from the automatic stay with respect to real property commonly known as 119 3rd Avenue Southeast, Hickory, North Carolina 28602 ("Property"). Movant has provided the Declaration of Marilyn Solivan to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Solivan Declaration states that there are 11 post-petition defaults, with a total of $1,892.87 in post-petition payments past due. Dkt. 75, ¶ 11. The declaration also notes that the Deed of Trust encumbering the Property was executed by Vickie W. Rhyne, deceased. A grant deed or estate document was executed on September 23, 2009, by Dante R. Rhyne granting an interest in the Property to debtor Mark Rhyne ("Debtor"). *Id.* at ¶ 7. However, it appears that a copy of the grant deed or estate document that Movant purports transfers an interest in the Property to Debtor was not attached as an exhibit for the court's review. *See* dkt. 76.

Debtors' Opposition

A declaration was filed in opposition by Debtor asserting that he did not believe he had any "stake in the real property," that the Property "arose from my mother's estate, the Estate of Vickie W. Ryne [sic]," the Property was "refinanced in 1998, with a $22,100.00 loan," and that "Dante Rhyne is my brother who moved into the home after my mother died." Dkt. 81, ¶¶ 1-3, 7. Debtor asserts his brother signed the loan modification agreement, and "[i]t is Dante Rhyne whom has lived and paid on this loan modification since its inception." *Id.* at ¶¶ 8, 9. Debtor "do[es] not believe that I have an interest in the property as I was told that it was my brother's and I never went back to challenge this assertion." *Id.* at p. 2. Debtor is willing to contribute any non-exempt funds to creditors if he has an interest in the Property. *Id.* No evidence has been submitted that Debtor has cured the post-petition delinquent payments claimed by Movant.

On November 15, 2018, debtors Mark and Carol Rhyne ("Debtors") filed amended Schedules A/B and C that valued the Property at $61,000.00, claimed a $0.00 equitable interest in the Property, and exempted up to $23,592.00 in any equity. Dkts. 85, 86.

Discussion

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $22,278.44 as stated in the Solivan Declaration. The value of the Property is determined to be $61,000.00 as stated in Amended Schedule A/B filed by Debtors. No evidence of another lien or encumbrance was presented to the court.

A debtor's persistent failure to make mortgage payments, standing alone, may constitute adequate cause for relief from the stay. *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045, *8 (B.A.P. 9th Cir. 2017) (internal quotations and citations omitted). In this case, however, the $38,722.00 equity available in the Property creates a cushion for Movant's claim and provides adequate protection. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moreover, at approximately 64%, the equity cushion provides Creditor with sufficient adequate protection at this time even in the absence of monthly payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984).

The motion will be denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

3.	18-25410-B-13 TJS-1	NEAL/LOURDES BASSETT Gary Ray Fraley	OBJECTION TO CONFIRMATION OF PLAN BY SOLANO FIRST FEDERAL CREDIT UNION 11-5-18 [16]

Final Ruling

The court's decision is to overrule this objection as moot, as the court sustained the objection of Jan Johnson, the Chapter 13 trustee, on November 10, 2018. Dkt. 24.

THE COURT WILL PREPARE A MINUTE ORDER.

4.	18-23911-B-13 JPJ-1	JEFFIE CRAWFORD Barry H. Spitzer	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 10-30-18 [21]

Final Ruling

The court's decision is to deny the motions to convert and dismiss as moot, as the court entered an order dismissing the case on November 28, 2018. Dkt. 29, 30.

THE COURT WILL PREPARE A MINUTE ORDER.

5.	18-24912-B-13 PLC-2	ALICE OSEGUERA Peter L. Cianchetta	MOTION TO CONFIRM PLAN 10-16-18 [42]

No Ruling

6. 18-24417-B-13 APN-1 — JUAN ANTONIO BENITES AND ALMA LOZANO — Scott D. Hughes — MOTION FOR RELIEF FROM AUTOMATIC STAY — 10-29-18 [30]

TOYOTA MOTOR CREDIT CORPORATION VS.

Tentative Ruling

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

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

Motion for Relief

Toyota Motor Credit Corporation, servicing agent for Toyota Lease Trust ("Movant"), seeks relief from the automatic stay with respect to an asset identified as a 2017 Toyota Camry VIN 4T1BF1FK9HU729541 ("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration provides testimony that debtors Juan Benites and Alma Lozano ("Debtors") have not made 3 post-petition payments, with a total of $767.13 in post-petition payments past due. The declaration also states that this is a lease, so Debtors have no equity in the Vehicle and their interest is solely possessory. Dkt. 32, p. 3.

From the evidence provided to the court, and only for purposes of this motion, this debt is classified as an executory contract or unexpired lease based on Debtors' Amended Schedule G filed September 14, 2018. Dkt. 22, p. 7.

Opposition

Debtors' counsel filed a declaration with an attached exhibit on November 19, 2018, claiming that the deficiency was cured by two payments on November 5, 2018, and November 8, 2018, totaling $767.13. Dkts. 38, 39. Debtors requested that the motion be withdrawn upon confirmation that the payments were received by Movant.

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). However, based on the representations by Debtors' counsel that the post-petition deficiency has been cured, cause does not exists to terminate the automatic stay under 11 U.S.C. § 362(d)(1).

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). A review of the court's docket shows that an amended plan was proposed September 14, 2018, and confirmed on November 7, 2018, which assumes the unexpired lease of Toyota Financial Services. Dkt. 21, p. 5, and dkt. 37. Because the lease has been assumed under the confirmed plan, the court finds there is sufficient evidence demonstrating that the collateral is necessary to an effective reorganization, and grounds do not exist to terminate the stay under § 362(d)(2).

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7. 16-25118-B-13 RICHARD CHASTAIN MOTION TO MODIFY PLAN
DPR-3 David P. Ritzinger 10-16-18 [74]
Thru #9

Final Ruling

Debtor Robert Chastain having filed a notice of withdrawal of his motion (dkt. 96), the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL PREPARE A MINUTE ORDER.

8. 16-25118-B-13 RICHARD CHASTAIN MOTION TO MODIFY PLAN
DPR-4 David P. Ritzinger 10-26-18 [87]

Final Ruling

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

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

9. 16-25118-B-13 RICHARD CHASTAIN CONTINUED MOTION TO CONVERT
JPJ-3 David P. Ritzinger CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
9-13-18 [65]

Final Ruling

The court's decision is to deny the motion to convert and the motion to dismiss dismissal without prejudice as moot based on ruling at Item #8.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

10.	18-21424-B-13 EJS-1	BRIAN/STEPHANIE PACE Eric John Schwab	MOTION TO MODIFY PLAN 10-26-18 [23]

No Ruling

11. 18-20026-B-13 PLC-2 — BRIAN SHAW, Peter L. Cianchetta — MOTION TO MODIFY PLAN, 11-1-18 [48]

Tentative Ruling

Debtor Brian Shaw ("Debtor") has filed a Motion to Modify Plan, which includes the claim of the Internal Revenue Service ("IRS"). Debtor's motion is designated PLC-2 and it is set for hearing on December 4, 2018, at 1:00 p.m. For the reasons explained below, the motion will be continued (in lieu of denied without prejudice) to permit proper service.

Service on the IRS for adversary proceedings and contested matters is governed by Local Bankruptcy Rule 2002-1(c), which provides as follows:

> (c) Notice to the Internal Revenue Service. **In addition** to addresses specified on the Roster of Governmental Agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:
>
> 1) United States Department of Justice
> Civil Trial Section, Western Region
> Box 683, Ben Franklin Station
> Washington, D.C. 20044;
>
> 2) United States Attorney as specified in LBR 2002-1(a) above; and
>
> 3) Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

(emphasis added).

A review of the certificate of service for Debtor's motion shows that the first two addresses were served, along with an address that is not listed on the Roster of Governmental Agencies nor the Proof of Claim 4 filed by the IRS. Dkt. 52, pp. 2, 3; POC 4. Thus, service on the IRS was not completed on all addresses required by Local Bankruptcy Rule 2002-1(c).

This court has previously dismissed and/or denied matters without prejudice as non-compliant on a related issue, namely, when service was not compliant with Federal Rule of Bankruptcy Procedure 7004(h). *See In re Muir*, No. 18-21924 (Bankr. E.D. Cal. 2018) (Docket 25); *In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dockets 24, 26). Other judges in this district have done the same. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dockets 62, 64). This court has also continued matters when service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Robles*, No. 17-25899 (Dockets 56, 60); *In re Petty*, No. 12-24999 (E.D. Cal. 2012) (Docket 42). For reasons of judicial economy and to avoid undue delay and expense to the Debtor, the court will continue the hearing on the Debtor's motion to permit Debtor to properly serve the IRS rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtor's motion filed at PLC-2 currently set to be heard on December 4, 2018, at 1:00 p.m. will be continued to January 15, 2018, at 1:00 p.m. Debtor shall serve the IRS at all addresses required by Local Bankruptcy Rule 2002-1(c) by December 11, 2018.

THE COURT WILL PREPARE A MINUTE ORDER.

12. 18-24827-B-13 ELIZABETH CANETE MOTION TO CONFIRM PLAN
KWS-2 Kyle W. Schumacher 10-9-18 [21]

Final Ruling

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

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

13.	18-25837-B-13 JPJ-1	STEPHEN WILLIAMS Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-7-18 [15]

No Ruling

14. 18-27038-B-13 JUAN/MARICELA CARRANZA MOTION TO IMPOSE AUTOMATIC STAY
MRL-1 Mikalah R. Liviakis 11-8-18 [8]

Tentative Ruling

While Debtors Juan and Maricela Carranza ("Debtors") provided more than 28 days' notice of the hearing, the notice filed states that this motion is brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Dkt. 9. Thus, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Debtor's Motion to Impose Stay

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed on all creditors. This is Debtors' third bankruptcy petition pending in the past 12 months. Debtors' prior bankruptcy cases were dismissed for the following reasons:

Case Number	Petition Filing Date	Dismissal Date	Reason	Docket Citations
17-27489	November 14, 2017	April 10, 2018	Chapter 13 Trustee's ex parte application to dismiss for failure to confirm an amended plan within 75 days of prior plan's denial.	42, 44
18-23481	June 1, 2018	October 22, 2018	Chapter 13 Trustee's ex parte application to dismiss for failure to confirm an amended plan within 60 days of prior plan's denial.	42, 44

Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the provisions of the automatic stay did not go into effect upon the filing of the instant case.

Discussion

If two or more single or joint cases of the debtor, or joint debtors, were pending within the previous year but were dismissed, the stay shall not go into effect upon filing the later case. 11 U.S.C. § 362(c)(4)(A). If, within 30 days after the filing of the later case, a party in interest requests, the court may order the stay to take effect in the case as to any or all creditors only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. *Id.* at § 362(c)(4)(B). The case is presumptively not filed in good faith if 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period, or a previous case under this title was dismissed after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse; mere inadvertence or negligence does not constitute a substantial excuse unless dismissal was caused by the negligence of the debtor's attorney. *Id.* at §§ 362(c)(4)(D)(i)(I) and (II). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(4)(D). 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).

Debtor Maricela asserts that the first bankruptcy case was dismissed because "my prior bankruptcy attorney . . . failed to properly classify the IRS debt . . . [and] did not respond with a remedy for the issues present in my plan." Dkt. 10, ¶ 5. Debtor Maricela further states that "[m]y second bankruptcy case . . . was dismissed because

my prior bankruptcy attorney . . . failed to file a motion to value the claim of the Internal Revenue Service. After the Bankruptcy [sic] trustee filed a Motion to Dismiss the case to give [prior counsel] a chance to respond and file a Motion [sic] to value the IRS claim and failed to do so again." *Id.* at ¶ 6.

Debtors have demonstrated a substantial change in their personal affairs and therefore have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to impose the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

15.	18-25840-B-13 JPJ-1	SHAVINA THOMAS Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-7-18 [28]

No Ruling

16. 17-25142-B-13 VINCENT/JANICE AYULE
JPJ-1 John Sargetis

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
10-30-18 [47]

WITHDRAWN BY M.P.

Final Ruling

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

THE COURT WILL PREPARE A MINUTE ORDER.

17. 17-21446-B-13 BLG-4 **Thru #19**

SHARISE ALLEN
Chad M. Johnson

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
11-5-18 [56]

Final Ruling

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

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

This is a request for an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against debtor Sharise Allen's ("Debtor's") property commonly known as 1612 McGuire Circle, Suisun City, California 94585 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,847.02. An abstract of judgment was recorded with Solano County on January 27, 2012, which encumbers the Property. All other liens recorded against the Property total approximately $364,775.50. Dkts. 58, 59.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $$447,000.00 as of the date of the petition. Dkt. 1, p. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of $100,000.00 on Schedule C. *Id.* at p. 17.

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

18. 17-21446-B-13 BLG-5

SHARISE ALLEN
Chad M. Johnson

MOTION TO EMPLOY RE/MAX GOLD AS REALTOR§
11-8-18 [66]

Tentative Ruling

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

The court's decision is to deny without prejudice the motion to employ RE/Max Gold as a realtor.

Debtor's Motion to Employ

Debtor Sharise Allen ("Debtor") seeks to employ RE/Max Gold as a broker ("Broker"), pursuant to 11 U.S.C. § 327(a). Debtor argues that Broker's appointment and retention is necessary to determine the fair market value of real property commonly known as 1612 McGuire Circle, Suisun City, California 94585 ("Property"), and to market and sell the Property for the benefit of Debtor and all creditors.

Amy Loaefa, a licensed real estate salesperson and agent employed by Broker, testifies that neither she nor Broker represent or hold any interest adverse to Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Dkt. 68.

A review of the court's docket shows that Debtor's Chapter 13 amended plan, proposed May 12, 2017, was confirmed on July 26, 2017. Dkts. 27, 38. The plan revests all property in the Debtor upon confirmation, and no special provisions in the plan, nor other alterations in the order confirming the plan, alter that treatment or require the trustee to retain possession of any property. Dkts. 27, 38.

Discussion

11 U.S.C. § 327(a) provides for the employment of professionals as follows:

> Except as otherwise provided in this section, **the trustee**, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, **to represent or assist the trustee** in carrying out the trustee's duties under this title.

(emphasis added).

There is a very compelling argument to be made that § 327 of the Bankruptcy Code does not apply to the employment of professionals by a Chapter 13 debtor. *See generally In re Roggio*, 577 B.R. 457 (Bankr. M.D. Pa. 2017) (no requirement for Chapter 13 debtor to seek approval of a realtor pursuant to § 327, and summarizing authority in other jurisdictions); *In re Demeza*, 582 B.R. 868, 875 (Bankr. M.D. Pa. 2018) (affirming principle in In re Roggio).

But suffice it to say for present purposes, § 327 is inapplicable. 11 U.S.C. § 327 permits the employment of professionals to assist the "trustee" in carrying out the "trustee's" duties in the administration of the estate. 11 U.S.C. § 1303 gives a Chapter 13 debtor the trustee's power to sell property under § 363(b).

The sale for which the Debtor proposes to employ a realtor in this case is a post-confirmation sale of property that is vested in the Debtor by virtue of a confirmed amended plan. In other words, there is no need for the court to approve employment of a professional to sell the Property in the administration of the estate because there is no estate (except to the extent explained in the ruling at Item #19) and the Property subject to sale is not property of the estate.

On these grounds, Debtor is not required to seek approval to employ RE/Max Gold as a professional. Thus, the motion is denied.

THE COURT WILL PREPARE A MINUTE ORDER.

19. 17-21446-B-13 SHARISE ALLEN — MOTION TO SELL
BLG-6 Chad M. Johnson — 11-5-18 [60]

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

Debtor's Motion to Sell

Debtor proposes to sell the property described as 1612 McGuire Circle, Suisun City, California 94858 ("Property").

Proposed purchaser Nijer Kwenu Talton ("Buyer") agreed to purchase the Property for $469,000.00, with an initial deposit of $5,000.00, a down payment of $144,000.00 due, and the balance of $320,000.00 to be funded by a first deed of trust. Dkt. 63, p. 11. Buyer shall pay the escrow fee and title insurance, while Debtor shall pay the County transfer tax of $1.10 per $1,000.00, or approximately $526.90, along with up to $500.00 for upgraded one-year home warranty plan for the air conditioner. *Id.* at p. 13.

Debtor summarized the payoff of secured creditors and costs of sale as follows:

Category	Type	Amount
Purchase Price		$469,000.00
Estimated Costs of Sale		
	Realtor Commission (5%)	($23,950.00)
	Wells Fargo Bank, N.A.	($354,161.82)
	CalHFA Mortgage Assistance Corp	($10,613.68)
	2018-2019 Property Taxes	($3,428.91)
Net for Seller		**$76,845.59**

Debtor estimates approximately $11,970.55 in unsecured claims, based on Debtor's schedules or the proofs of claim filed, that may be paid in full from the proceeds of this sale. Dkt. 60, p. 2.

Creditor's Opposition

Creditor Wells Fargo Bank, N.A. ("Creditor") filed an objection on November 20, 2018. Dkt. 71. However, "Creditor does not oppose Debtor's Motion to Sell as it seeks to pay Creditor's Claim in full." Dkt. 71, p. 2. Creditor suggests that, if Debtor disputes the amount owing to Creditor on its claim, that the undisputed amount be paid to Creditor and the disputed amount be segregated in an interest bearing account along with an additional $10,000.00, pending further order from the court. *Id.*

Discussion

The Bankruptcy Code permits a Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. However, post-confirmation, whether a Chapter 13 debtor is required to seek court approval is a novel question in the Ninth Circuit. At least one court in another circuit has held that a post-confirmation debtor does not require court approval. *In re Walker*, 20 B.R. 372, fn 1 (E.D. Va. 1982) ("Upon confirmation title to the property of the estate vests in the debtors. 11 U.S.C. § 1327(c). The Debtors had an unrestricted right to dispose of the real estate."). This approach is consistent with the interpretation of the effect of both 11 U.S.C. §§ 1306(a) and 1327(b) in the Ninth Circuit. *See In re Jones*, 657 F.3d 921, 927-29 (9th Cir. 2011) (describing the inherent conflict between 11 U.S.C. §§ 1306(a)

and 1327(b) and other circuits' approaches, and rejecting the estate preservation approach); *see also In re Clark*, 2015 WL 6164003 *4 (E.D. Cal. 2015) (citing to *In re Thiel*, 2015 WL 2398555 *3-4 (Bankr. Idaho 2015), and stating that property that revests in the debtor and is not specifically reserved to the estate is not subject to § 363); *see also In re Jones*, 420 B.R. 506, 514, 517 (B.A.P. 9th Cir. 2009) (adopting estate termination approach, except for property clearly reserved for the bankruptcy estate in the plan or order confirming plan).

Here, the Property revested in Debtor according to the confirmed plan, and was not reserved to the estate by the confirmed Chapter 13 plan or the order confirming plan (dkts. 27, 38). So as stated in the ruling at Item #18, this is not a sale of property of the estate.

Nevertheless, the court is cognizant of Local Bankruptcy Rule 3015-1(h)(1) which states that "[e]xcept for transfers made in the ordinary course by a business debtor, prior to completion of payments under the applicable plan, the debtor shall not sell or transfer property or incur debt except as provided herein." The "except as provided herein" requires Trustee approval for sales of "real . . . property with a value of $1,000.00 or more other than in the ordinary course of business." LBR 3015-1(h)(1)(D).

Inasmuch as the Debtor has given no indication as to whether the proposed sale of the Property is or is not in the ordinary course, and because the local rule applies to sales of all real property before plan payments are completed to avoid potential disclosure issues at the conclusion of the plan term, the court will grant the motion and approve the sale, provided that all creditors secured by an interest in the Property are paid in full. No reservation or retention for a disputed secured creditor shall be required.

THE COURT WILL PREPARE A MINUTE ORDER.

20.	17-28150-B-13 JPJ-2	ANGELA BRACE Peter G. Macaluso	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 10-30-18 [24]

No Ruling

21.	18-26354-B-13 JPJ-1	TIMOTHY/NICOLE ARSENAULT Bruce Charles Dwiggins	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-14-18 [15]

No Ruling

22. 17-20155-B-13 RUMMY SANDHU
PGM-7 Peter G. Macaluso

MOTION TO MODIFY PLAN
10-20-18 [135]

No Ruling

23.	18-22956-B-13 DPR-3	MARIO/DEBORAH DERENZI David P. Ritzinger	MOTION TO CONFIRM PLAN 10-16-18 [42]

No Ruling

24. 18-22662-B-13 RAJINDAR SINGH
DNL-2 Peter G. Macaluso
Thru #25

MOTION FOR COMPENSATION FOR J. MICHAEL HOPPER, CHAPTER 7 TRUSTEE
11-6-18 [65]

Final Ruling

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

The court's decision is to grant the motion for compensation.

FEES AND COSTS REQUESTED

J. Michael Hopper, the pre-conversion Chapter 7 trustee ("Applicant"), makes a first and final request for the allowance of $1,710.00 in fees and no expenses. The period for which the fees are requested is for April 30, 2018, through September 6, 2018.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkts. 67, 68.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by a Chapter 7 trustee pre-conversion are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the bankruptcy estate and are reasonable.

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

Fees	$1,710.00
Costs and Expenses	$0.00

COUNSEL FOR THE APPLICANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

25.	18-22662-B-13 DNL-3	RAJINDAR SINGH Peter G. Macaluso	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY 11-6-18 [71]

Final Ruling

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

The court's decision is to grant the motion for compensation.

FEES AND COSTS REQUESTED

Desmond, Nolan, Livaich & Cunningham, the attorney for the pre-conversion Chapter 7 trustee ("Applicant"), makes a first and final request for the allowance of $5,855.00 in fees and $731.66 in expenses. The period for which the fees are requested is for May 28, 2018, through September 6, 2018.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkts. 73-75.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based

> on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate and reasonable.

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

Fees	$5,855.00
Costs and Expenses	$731.66

COUNSEL FOR THE APPLICANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

26.	18-24865-B-13 TBG-1	MICHAEL TOLLE Stephan M. Brown	MOTION TO CONFIRM PLAN 10-23-18 [37]

Intentionally left blank.

27. 18-25566-B-13 KULWINDER DHALIWAL
JPJ-2 Richard L. Sturdevant

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
10-30-18 [23]

Final Ruling

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

The court's decision is to convert this Chapter 13 case to a Chapter 7, and deny the motion to dismiss without prejudice as moot.

Trustee's Motion to Convert or Dismiss

This motion has been filed by Jan Johnson, the Chapter 13 trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

First, Movant states that debtor Kulwinder Dhaliwal ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Second, Debtor has not provided Movant with employer payment advices or proof of income for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, Movant argues that Debtor did not provide a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, Debtor has not provided the Chapter 13 Trustee with the Class 1 Checklist and the Authorization to Release Information to Trustee Regarding Secured Claims Being paid by the Trustee. LBR 3015-1(b)(6). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

After a review of Debtor's filed Schedules A/B and C, Movant estimates there is $116,293.52 of non-exempt equity as a result of Debtors' residence, a 2008 Toyota Prius, a 2002 Toyota Camry, a 2010 International Tractor, clothing, and checking and savings accounts. Thus, Movant argues that conversion is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under

> this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Based on the grounds presented, and the defaults entered against all non-responding parties in interest pursuant to Local Bankruptcy Rule 9014-1(f)(1)(B), cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The motion to convert to Chapter 7 is granted, and the motion to dismiss is denied without prejudice as moot.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

28. 18-24368-B-13 LASONJA PORTER
BDA-1 Julius J. Cherry

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE, LLC
8-23-18 [19]

Final Ruling

The court vacated this hearing in its order approving the stipulation filed by the parties on November 13, 2018. Dkt. 36.

THE COURT WILL PREPARE A MINUTE ORDER.

29. 17-27971-B-13 MO TEYMOURI
GW-4 Gerald L. White

MOTION TO RELEASE FUNDS HELD BY CHASE BANK
10-31-18 [48]

Tentative Ruling

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

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

Debtor Mo Teymouri ("Debtor") filed the instant motion for an order to release funds pursuant to 11 U.S.C. § 547(b). Dkt. 48. However, a review of the motion shows that Debtor seeks recovery of property, which requires an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(1). *See Houston v. Eiler (In re Cohen)*, 305 B.R. 886, 890 (B.A.P. 9th Cir. 2004).

THE COURT WILL PREPARE A MINUTE ORDER.

30.	18-22674-B-13 JPJ-3	DIDIER GIRON Seth L. Hanson	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 10-29-18 [36]

No Ruling

31. 18-25780-B-13 JPJ-1 **Thru #33**
TIFFANY MILLER
Mohammad M. Mokarram
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-7-18 [25]

No Ruling

32. 18-25780-B-13 MSK-1
TIFFANY MILLER
Mohammad M. Mokarram
OBJECTION TO CONFIRMATION OF PLAN BY CONSUMER PORTFOLIO SERVICES, INC.
11-8-18 [36]

Tentative Ruling

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

Consumer Portfolio Services, Inc. ("Creditor") objects based on the court's order, dated November 6, 2018, that values Creditor's claim as $15,615.00. Dkt. 41. Debtor Tiffany Miller's ("Debtor's") proposed plan dated September 12, 2018 ("Plan") only provides for payment of $12,000.00 on Creditor's claim. Dkt. 4, p. 4. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

33. 18-25780-B-13 PPR-1
TIFFANY MILLER
Mohammad M. Mokarram
OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE SERVICES, LLC
11-8-18 [31]

Tentative Ruling

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

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

Creditor's Objection to Confirmation

Carrington Mortgage Services, LLC ("Creditor") filed an objection to confirmation on November 8, 2018. Dkt. 31.

First, Creditor argues that the proposed plan dated September 12, 2018 ("Plan"), does not provide for the $6,000.00 in pre-petition arrears that Creditor plans to timely file in the future. Thus, Creditor argues that the Plan does not comply with 11 U.S.C. §§ 1325(a)(5)(B)(ii) and 1325(a)(6).

Second, Creditor argues that the Plan is not feasible because it requires monthly payments of $560.00 per month for 48 months, which would not pay Creditor's claim in full. Creditor argues this is further evidence that the plan does not comply with 11 U.S.C. § 1325(a)(6).

Third, Creditor argues that its claim is improperly classified as Class 4 instead of Class 1 because the claim is secured by Debtor's primary residence.

Proof of Claim

A review of the claims registry shows that Proof of Claim 12 was filed November 21, 2018, which lists J.P. Morgan Mortgage Acquisition Corp as the creditor, with notice and payments to be sent to Carrington Mortgage Services, LLC. The proof of claim states a pre-petition default of $6,044.53. POC 12, p. 2.

Discussion

Creditor holds a deed of trust secured by the Debtor's residence, and has filed a timely proof of claim in which it asserts $6,044.53 in pre-petition arrearages. *Compare* dkt. 1, pp. 2, 11, 19, *and* POC 12. The plan does not propose to cure these arrearages. Dkt. 4, p. 4. 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 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

34. 18-25884-B-13 LEON GRAY
JPJ-1 Thomas L. Amberg

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-7-18 [24]

Tentative Ruling

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

Trustee's Objection to Confirmation

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an objection to confirmation and motion for conditional dismissal on November 7, 2018. Dkt. 24.

First, Trustee asserts that debtor Leon Gray ("Debtor") failed to submit proof of his social security number at the Meeting of Creditors as required by Federal Rule of Bankruptcy procedure 4002(b)(1)(B). Thus, Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, Trustee argues that the plan does not commit Debtor's disposable monthly income. Based on Trustee's review of Form 122C-2, Trustee argues that Debtor must pay at least $125,844.00 to general unsecured creditors. However, Debtor only proposes to pay $21,090.30 in the proposed plan filed September 18, 2018. Thus, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B).

Debtor's Reply

Debtor filed a reply on November 8, 2018. Dkt. 28.

Debtor represents, with no evidence submitted, that he provided Trustee with a copy of his social security card on November 7, 2018. Dkt. 28.

Debtor also asserts that he filed an amended Form 122C on November 8, 2018, that corrects "a number of initial errors and omissions from the originally-filed version." Dkt. 28, ¶ 2. These corrections show total disposable income of $332.40, which requires the plan to commit $19,944.00 to general unsecured creditors over the life of the plan. Debtor's plan currently proposes $21,090.30.

Discussion

Based on Debtor's representations, the objections of Trustee have been resolved. However, resolving these objections do not guarantee confirmation of the plan. *See United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380-81 (2010) (explaining that bankruptcy courts have an obligation to review a chapter 13 plan to ensure that it complies with all applicable provisions of the Bankruptcy Code).

The court notes that Debtor's amended Form 122C-2, filed November 8, 2018, under penalty of perjury, shows disposable monthly income of $332.40, whereas Debtor's Schedule J projects monthly net income of $960.00 going forward. *Compare* dkt. 27, p. 12 *and* dkt. 1, p. 36.

As the Supreme Court stated in *Hamilton v. Lanning*, "[i]n cases in which the debtor's disposable income is higher during the plan period, the mechanical approach would deny creditors payments that the debtor could easily make." *Hamilton v. Lanning*, 130 S. Ct. 2464, 2476 (2010); *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 71 (2011) (citing to *Hamilton v. Lanning* for principle that "Congress designed the means test to measure

debtors' disposable income and, in that way, 'to ensure that [they] repay creditors the maximum they can afford.' H.R. Rep., at 2. This purpose is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment."). Based on Debtor's filed schedules, Debtors can afford payments of $960.00 per month during the plan period. Thus, the plan cannot be confirmed until Debtor proposes a plan that complies with 11 U.S.C. § 1325(b).

The plan filed September 18, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

35. 18-25792-B-13 CJO-1 **Thru #37**
PHILLIP/SHANNON VAN EVERY
Mohammad M. Mokarram
OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION
10-31-18 [21]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 3015-1(c)(4) & (d)(1) *and* 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(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 PHH Mortgage Corporation ("Creditor") holds a deed of trust secured by the residence of debtors Phillip and Shannon Van Every ("Debtors"). Creditor has filed a timely proof of claim in which it asserts $4,128.45 in pre-petition arrearages. POC 12. The plan does not propose to cure these arrearages. Dkt. 11, p. 4. 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 26, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

36. 18-25792-B-13 DO-1
PHILLIP/SHANNON VAN EVERY
Mohammad M. Mokarram
OBJECTION TO CONFIRMATION OF PLAN BY SAFE CREDIT UNION
11-7-18 [27]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 3015-1(c)(4) & (d)(1) *and* 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(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, creditor SAFE CREDIT UNION ("Creditor") argues that the plan proposed on September 26, 2018, by debtors Phillip and Shannon Van Every ("Debtors") fails to provide for the secured portion of Creditor's claim. The court notes that Creditor timely filed a proof of claim on November 19, 2018, asserting a security interest in certain personal property for a secured amount of $55,092.00 and an unsecured amount of $67,251.05. Am. POC 8. Creditor also asserts that Debtors' Schedules failed to list the commercial trailer, recreational camper, boat, and 1996 Chevy Pickup that were subject to Creditor's perfected security interest, and lists tools and equipment valued at $28,225.00 as assets that are "not part of the corporation," which is contrary to the representations that Debtors made when applying for the SBA Loan. Thus, Creditor argues the plan is not confirmable.

Second, Creditor argues that the plan is not feasible because Debtors' income of $7,192.00 and monthly expenses of $6,232.00 leaves $960.00 per month for plan payments. However, Creditor asserts that a Writ of Possession was issued against Corvette Care,

Inc., the corporation belonging to Debtors, which requires the corporation to turn over all collateral pledged for the SBA Loan, including "all equipment and inventory." Because the corporation is required to turn over the corporate assets, Debtors cannot rely on the $2,437.00 of income per month from the corporation to fund the plan. Thus, Creditor believes Debtors have not carried their burden of showing the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

Third, Creditor asserts Debtors did not propose the plan in good faith because the plan does not provide adequate means to be implemented and Debtors failed to produce any credible evidence that the plan can be funded over the five year commitment period.

Fourth, Creditor believes it is entitled to 7.00% interest on the allowed portion of its secured claim pursuant to 11 U.S.C. § 506(b). Without providing for interest on its secured claim, Creditor argues the plan is not confirmable.

On the grounds presented, the plan filed September 26, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

37.	18-25792-B-13 JPJ-1	PHILLIP/SHANNON VAN EVERY Mohammad M. Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 11-7-18 [24]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 3015-1(c)(4) & (d)(1) *and* 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(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, Jan Johnson, the Chapter 13 trustee ("Trustee"), argues that the plan proposed on September 26, 2018, by debtors Phillip and Shannon van Every ("Debtors") does not commit all projected disposable income. Based on a review of Forms 122C-1 and 122C-2, Debtors included "the wrong gross amount of $4,973.00 for net income from operating a business, profession, or farm." Dkt. 24, pp. 1-2. Trustee asserts the correct amount is $6,992.00, with the correct gross amount listed on Form 122C-1. Trustee calculates that, based on the corrected disposable income, Debtors must pay at least $114,716.40 to general unsecured creditors. Because the plan pays only $21,803.65 to general unsecured creditors, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B).

The plan filed September 26, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

38. 18-25595-B-13 PGM-2 | STEVEN/SHARON COLLINS
Peter G. Macaluso | MOTION TO VALUE COLLATERAL OF THE INTERNAL REVENUE SERVICE
10-25-18 [33]

Tentative Ruling

The motion has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value.

Debtors' Motion to Value

Debtors Steven and Sharon Collins ("Debtors") filed a motion to value the secured claim of the Internal Revenue Service ("Creditor"), which is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 5543 Danjac Circle, Sacramento, California 95822 ("Property"), which they list in the petition as their residence. Debtors seek to value the Property at a fair market value of $589,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by the Internal Revenue Service is the claim which may be the subject of the present motion. According to Claim No. 2, the IRS is secured by a lien on the Property and all of the Debtors' personal property.

Discussion

Creditor asserts a secured claim with a balance of approximately $119,744.36. POC 2, p. 2. A first deed of trust secures a claim on the Property with a balance of approximately $342,690.26. A second deed of trust on the Property secures a claim with the balance of approximately $235,712.73. With Debtors' valuation of the Property at $589,000.00, this leaves $10,597.01 of equity for Creditor's lien to attach. But that does not end the inquiry.

According to Claim No. 2, the IRS is secured under 26 U.S.C. § 6321 which states as follows:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(emphasis added).

Inasmuch as the IRS claim is secured by real *and* personal property, its claim is not secured only by a lien on the Debtors' principal residence. That means the IRS' secured claim may be bifurcated and modified. *See* 11 U.S.C. § 1322(b)(2); *see also Nobleman v. American Savings Bank*, 508 U.S. 324 (1993). However, that the IRS' secured claim *may* be bifurcated does not mean that it *should* be bifurcated and limited to the $10,597.01 equity in the Property as is requested in the motion.

In addition to the Property, the Debtors' schedules list a significant amount of personal property. Debtors have presented no evidence that would permit the court to conclude that their personal property is fully exempt or its value is $0.00. Therefore, the court cannot conclude that the value of IRS' collateral - and thence the extent of its lien - is limited to the equity in the Property.

The motion will be denied without prejudice.

THE COURT WILL PREPARE A MINUTE ORDER.