

**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: January 8, 2019

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

January 8, 2019 at 1:00 p.m.

1.	<u>18-26800</u> -B-13 MICHAEL/EMMA POST <u>JPJ</u> -1 Steven A. Alpert	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 12-14-18 [<u>24</u>]
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Final 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 continue this matter to January 15, 2018, at 1:00 p.m.

First, Jan Johnson, the Chapter 13 trustee ("Trustee"), asserts that debtors Michael and Emma Post ("Debtors") did not appear at the meeting of creditors set for December 13, 2018, as required pursuant to 11 U.S.C. § 343. Trustee also notes that Michael Hays, the appearance counsel at the first meeting, informed Trustee that Mr. Post passed away recently. The meeting was continued to January 10, 2019, at 1:30 p.m. for Mrs. Post to appear.

The court will continue this matter to January 15, 2018, at 1:00 p.m. to allow Debtors an opportunity to appear at the continued meeting on January 10, 2018, at 1:30 p.m.

THE COURT WILL PREPARE A MINUTE ORDER.

2. [18-22404](#)-B-13 ALICE SHARP
[SLE](#)-2 Steele Lanphier

MOTION TO CONFIRM PLAN
11-5-18 [[52](#)]

No Ruling

3. [18-25604](#)-B-13 RHONDA SMITH
[JAS](#)-1 James A. Shepherd

MOTION TO CONFIRM PLAN
11-9-18 [[20](#)]

No Ruling

4. [18-26804](#)-B-13 JUSTIN/MICHELE BROUSSARD OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[21](#)]

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.

There being no other objection to confirmation, the plan filed October 30, 2018, will be confirmed.

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

5. [18-26605](#)-B-13 DEBRA THOMPSON
[JPJ](#)-1 Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[22](#)]

No Ruling

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

COUNSEL FOR THE DEBTORS 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.

7. [18-26908](#)-B-13 KEVIN BRAKENBURY
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-19-18 [[12](#)]

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"), objects to payment of attorneys fees through the Chapter 13 plan proposed by debtor Kevin Brakenbury ("Debtor") because Debtor failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys as required by Local Bankruptcy Rule 2016-1(c)(2).

Second, after reviewing Debtor's 2017 federal tax return, Trustee argues that Debtor failed to disclose a \$16,000.00 distribution from an IRA and a \$4,912.00 settlement with Circuit City, until Debtor testified at the Meeting of Creditors. Trustee requested Debtor to file an amended Statement of Financial Affairs for these two distributions, but Debtor has not done so. Trustee objects to confirmation pursuant to 11 U.S.C. § 521(a)(3).

The plan filed November 1, 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.

8. [18-25613](#)-B-13 JOSE PENA
[TOG](#)-2 Thomas O. Gillis

MOTION TO CONFIRM PLAN
12-4-18 [[34](#)]

No Ruling

9. [18-26713](#)-B-13 MATEO/EVA GALVAN
[JPJ](#)-1 Harry D. Roth

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[16](#)]

No Ruling

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, debtors Allen and Nicole Gamble ("Debtors") did not appear at the meeting of creditors set for December 6, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtors are delinquent approximately 1 plan payment, or \$1,000.00. Thus, Debtors failed to carry their burden of showing the plan is feasible under 11 U.S.C. § 1326(a)(6). Further, based on this delinquency, Jan Johnson, the Chapter 13 trustee ("Trustee"), was unable to make the November payment to Class 1 creditor Flagstar Bank Mortgage Property, which violates Section 3.07(b) of the plan.

Third, the plan filed by Debtors states in Section 1.02 that there are nonstandard provisions, but no nonstandard provisions were included and no amendment has been filed. Trustee argues that the plan does not comply with Local Bankruptcy Rule 3015-1(a).

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

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

Sixth, Debtors failed to provide Trustee with a Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee, as required by 11 U.S.C. § 521(a)(3) and Local Bankruptcy Rule 3015-1(b)(6).

Seventh, Debtors failed to file certificates of completion for credit counseling as required by 11 U.S.C. § 521(b)(1). Trustee argues that Debtors are not be eligible for relief pursuant to 11 U.S.C. § 109(h).

Eighth, Trustee argues the plan does not comply with the liquidation analysis required by 11 U.S.C. § 1325(a)(4) because, after reviewing Schedules A, B, and C, Trustee estimates non-exempt equity of \$338,841.02, while the plan only provides for payments of \$1,000.00 to general unsecured creditors.

Ninth, the plan payment of \$1,000.00 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 plan does not comply with Section 5.02 of the mandatory form plan.

The plan filed November 19, 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.

11. [18-26913](#)-B-13 ROBERT SIMMONS
[JPJ](#)-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-17-18 [[20](#)]

No Ruling

12. [18-26916](#)-B-13 JERIMIAH CANNADAY
[JPJ](#)-1 W. Steven Shumway

See Also #12

No Ruling

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-19-18 [[17](#)]

Tentative Ruling

The motion has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(a)(2) and Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Debtor's Motion to Sell

Debtor Jennifer Wilkinson ("Seller") proposes to sell the property described as 1000 Calgary Court, El Dorado Hills, California 95762 ("Property").

Proposed purchaser Chris McFadden ("Buyer") agreed to purchase the Property for \$399,000.00, with an initial deposit of \$3,000.00 and the balance to be paid as an all cash purchase. Dkt. 68, p. 3. Buyer and Seller shall split the escrow and title fees, and Seller shall pay for title insurance and any County transfer taxes or fees. *Id.* at p. 5.

Debtor estimates that all unsecured claims will be paid in full from the proceeds of this sale, as provided in the Third Modified Plan confirmed April 10, 2018. Dkts. 54, 65.

Discussion

While property of the estate revested in Debtor according to the confirmed plan (dkt. 54, p. 7, § 6.01), Debtor's plan relied on a payment of "a lump sum to pay off the plan in full from proceeds from the sale of the debtor's residence." *Id.* at p. 2, § 2.02. Thus, this is the sale of property of the estate and is governed by 11 U.S.C. § 363.

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. Based on the representations by Debtor's counsel to the court, the court determines that the proposed sale is in the best interest of the Estate based on the payment of all general unsecured claims in full.

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

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

14. [18-21224](#)-B-13 ARLENE MARTINEZ
[JPJ](#)-3 Marc A. Caraska

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
11-20-18 [[49](#)]

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.

This motion was filed by Jan Johnson, the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be converted, or in the alternative dismissed, based on the following grounds.

First, Movant argues that debtor Arlene Martinez ("Debtor") failed to prosecute because her motion to confirm amended plan was heard and denied on October 15, 2018, and no further amended plan has been filed. This is cause for dismissal or conversion under 11 U.S.C. § 1307(c)(1).

Second, Debtor is delinquent approximately one-half plan payment, or \$1,883.20, which is cause for dismissal or conversion under 11 U.S.C. § 1307(c)(1).

Movant has reviewed Schedules A/B and C and estimates that the total non-exempt equity for the estate is \$53,014.20. Thus, Movant asserts that conversion is in the best interests of creditors and the estate. The court agrees.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION TO CONVERT TO A CASE UNDER CHAPTER 7 AND DENYING THE MOTION TO DISMISS AS MOOT.

15. [18-24424](#)-B-13 SULLAY DIN GABISI
[RWH](#)-1 Ronald W. Holland

MOTION TO CONFIRM PLAN
11-26-18 [[34](#)]

No Ruling

See Also #88

16. [18-24625](#)-B-13 MARK ROBINSON
AP-1 Scott D. Hughes
Thru #17
NATIONSTAR MORTGAGE LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-10-18 [[39](#)]

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). 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.

Nationstar Mortgage LLC dba Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4832 Hamilton St., Sacramento, California 95841 ("Property"). Movant has provided the Declaration of Chastity Wilson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that there are 2 post-petition defaults, with a total of \$1,781.44 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this Property is determined to be \$136,023.72 as stated in the Proof of Claim 1 filed by Creditor August 16, 2018, along with a second \$80,887.00 secured interest of Specialized Loan Servicing, LLC, as stated in debtor Mark Robinson's ("Debtor's") Schedule D. Dkt. 1, p. 19. The value of the Property is determined to be \$620,000.00 as stated in Schedules A and D filed by Debtor. Dkt. 1, p. 11.

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).

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 \$403,089.28 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 65%, 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 COURT WILL PREPARE A MINUTE ORDER.

17. [18-24625](#)-B-13 MARK ROBINSON
[SDH-1](#) Scott D. Hughes

AMENDED MOTION TO CONFIRM PLAN
11-26-18 [[36](#)]

No Ruling

Tentative Ruling

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

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

Debtor's Motion to Extend Stay

Debtor John Mehl ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on November 15, 2018, due to failure to timely file documents (case no. 18-26553, dkt. 29 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if (1) a debtor failed to file or amend the petition or other documents as required by Title 11 without substantial excuse, or (2) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(II)(aa) and (III). The presumption of bad faith may be rebutted by clear and convincing evidence, but mere inadvertence or negligence is not a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney. *Id.* at § 362(c)(3)(C) and (C)(i)(II)(aa).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008).

Debtor asserts that "he was representing himself in that case and was in over his head and unable to file the balance of schedules and propose a Plan." Dkt. 11, p. 1; dkt. 13, lns. 23-24. However, Debtor is "now represented by counsel and [he] will file the balance of the required schedules and a proposed Chapter 13 Plan before the hearing on this matter." Dkt. 13, pp. 1-2. Further, Debtor asserts that his income has increased recently due to "a number of commissions pending from sales that I believe will close within a month or two," as well as further business from a "Tuscan Ridge project" and a "loan modification from Wells Fargo." *Id.* at lns. 13-19.

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

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

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

19. [18-25728](#)-B-13 JAMES RUELOS AND SUSAN MOTION TO CONFIRM PLAN
MB-1 SABADLAB 12-4-18 [[25](#)]
Michael Benavides

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). The court will address the merits of the motion at the hearing.

The court's decision is to continue this matter to February 19, 2019, at 1:00 p.m. to allow for proper service of the motion on all parties in interest.

Discussion

Federal Rule of Bankruptcy Procedure 2002(a) requires the moving party to serve "the debtor, the trustee, all creditors and indenture trustees at least 21-days notice by mail of . . . (9) the time fixed for filing objections to confirmation of a chapter 13 plan."

A review of the certificate of service for the motion to confirm of debtors James Ruelos and Susan Sabadlab ("Debtors") shows that not all creditors were served. In particular, Portfolio Recovery Associates, LLC (POC 16), Quantum3 Group LLC as agent for Comenity Capital Bank (POC 15), and TD Retail Card Services (POC 8) were not served. Dkt. 29.

In similar circumstances, this court has continued matters when service was not sufficient and provided the moving party with an opportunity to re-serve in compliance with the Bankruptcy Rules. 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 Debtors, the court will continue the hearing on the Debtors' motion to permit the Debtors to properly serve all parties in interest rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtors' motion filed at MB-1 currently set to be heard on January 8, 2019, at 1:00 p.m. will be continued to February 19, 2019, at 1:00 p.m. The Debtors shall serve all parties in interest in the manner required by Bankruptcy Rule 2002 by January 15, 2019.

THE COURT WILL PREPARE A MINUTE ORDER.

20. [18-26528](#)-B-13 KRISHNAPRASAD NALAJALA OBJECTION TO CONFIRMATION OF
[Thru #21](#) Brian L. Coggins PLAN BY WELLS FARGO BANK, N.A.
12-6-18 [[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.

Creditor Wells Fargo Bank, N.A. ("Creditor") objects on two related grounds. First, the plan does not propose to cure the \$6,123.05 in pre-petition arrearages, as provided in Creditor's proof of claim filed December 6, 2018. POC 3, p. 2. Second, the plan does not maintain the post-petition payments under the note, which Creditor calculates as \$1,924.19 per month. POC 3, attachment 1, pp. 18, 19. The court notes that the proposed plan provides \$0.00 in arrears, and post-petition monthly payments of \$0.00. Dkt. 9, p. 3.

The plan filed October 30, 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.

21. [18-26528](#)-B-13 KRISHNAPRASAD NALAJALA OBJECTION TO CONFIRMATION OF
[JPJ-1](#) Brian L. Coggins PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-5-18 [[18](#)]

No Ruling

22. [18-26630](#)-B-13 MICHAEL MULLINS
[JPJ](#)-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[17](#)]

No Ruling

23. [17-28231](#)-B-13 DEE HAUGEN
[DAO](#)-1 Dale A. Orthner

MOTION TO MODIFY PLAN
11-21-18 [[21](#)]

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 Dee Haugen 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.

24. [18-27131](#)-B-13 STEPHEN/SUSAN JOHNSON
[JPJ](#)-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-18-18 [[18](#)]

No Ruling

25. [18-23232](#)-B-13 LINDA CATRON
[18-2149](#) MJR-1
CATRON V. 2614 SACRAMENTO
STREET, LLC

MOTION TO VACATE DEFAULT
11-30-18 [[17](#)]

See Also #89
Tentative Ruling

The court has before it a *Memorandum of Points and Authorities in Support of Defendant's Motion to Vacate Default* filed by defendant 2614 Sacramento Street, LLC.¹ Adv. Dkt. 17. Plaintiff Linda Sue Catron opposes the motion. Adv. Dkt. 28. The motion was heard on February 8, 2019. Appearances were noted on the record.

For the reasons explained below, the motion will be denied. Findings of fact and conclusions of law are set forth below. See FED. R. CIV. P. 52(a); FED. R. BANKR. P. 7052.

Background

Plaintiff was a debtor in two Chapter 13 cases. The plaintiff's first Chapter 13 case, No. 18-23232, was filed on May 23, 2018, and dismissed on October 19, 2018. The plaintiff's second Chapter 13 Case, No. 18-26923, was filed on November 1, 2018, and dismissed on November 30, 2018, for failure to timely file documents. This adversary proceeding is associated with the plaintiff's first Chapter 13 case.

The complaint that initiated this adversary proceeding was filed on September 12, 2018. Adv. Dkt. 1. It alleges three claims for relief: one § 542(a) turnover claim and two § 362(a) stay violation claims. *Id.* Section 542(a) and 362(a) issues potentially relevant to this adversary proceeding were also addressed and decided in the context of plaintiff's turnover motion and defendant's stay relief motion heard in the plaintiff's first Chapter 13 case. See No. 18-23232, dkts. 20-23, 31-34, 39, 41, 64-69, 75-77, 82, 88-92, 98, 100. No appeals were taken from the determination of those matters.

A summons issued on September 12, 2018. Adv. Dkt. 3. Defendant was also served with the summons and complaint on September 12, 2018. Adv. Dkt. 6. More precisely, in addition to the Chapter 13 Trustee, the certificate of service reflects service of the summons and complaint on the following individuals:

Hubert Tan
Agent for service of process for
2614 Sacramento Street, LLC
5758 Geary Boulevard #368
San Francisco, CA 94121

Mark J. Romeo
Law Office of Mark J. Romeo
235 Montgomery Street, Suite 400
San Francisco, California, 94104

Id.

Defendant's response to the complaint was due by October 12, 2018. Defendant did not timely respond so on November 16, 2018, plaintiff filed an application for entry of defendant's default. Adv. Dkt. 11. The clerk entered defendant's default on November

¹The memorandum of points and authorities is both a memorandum of points and authorities and a motion. No separate motion is filed as required by Local Bankruptcy Rules 9004-2(c)(1), 9014-1(1)(d)(4). Failure to comply with the local rules is cause to deny the motion without prejudice. See LBR 1001-1(g), 9004-1(a), 9014-1(1). However, in the interests of judicial economy, the court exercises its discretion to waive the defendant's noncompliance with the local rules and to decide the motion.

Defendant now moves for relief from its default. The court notes that defendant appropriately requested plaintiff to stipulate to set aside the default and plaintiff refused to do so.

Discussion

The court initially disposes of two of defendant's separate but related arguments.

First, as a function of its "arising under" jurisdiction, this court has subject matter jurisdiction over an adversary proceeding that asserts claims for violation of § 362 after a parent bankruptcy case is dismissed and without the need to retain jurisdiction. *In re Aheong v. Mellon Mortg. Co. (In re Aheong)*, 276 B.R. 233, 244, 247 (9th Cir. BAP 2002); *Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez)*, 227 B.R. 174, 179 (9th Cir. BAP 1998), *aff'd*, 208 F.3d 220 (9th Cir. 2000); see also *Johnson v. Smith (In re Johnson)*, 575 F.3d 1079, 1084 (10th Cir. 2009) ("The great weight of case authority supports our conclusion that a § 362(k)(1) proceeding remains viable after termination of the underlying bankruptcy case.").

Second, the plaintiff had standing in her second Chapter 13 case to prosecute claims for violation of the automatic stay arising out of and brought in her first Chapter 13 case. *In re Hoover*, 2012 WL 8255558, *3 (Bankr. E.D. Cal. 2012) (citing *Cnty. of Ventura Tax Collector v. Brawders (In re Brawders)*, 325 B.R. 405, 409 n. 5 (9th Cir. BAP 2005), *aff'd sub nom., Brawders v. Cnty. of Ventura (In re Brawders)*, 503 F.3d 856 (9th Cir. 2007) (adopting BAP's decision in its entirety)).

Now to defendant's request for relief from its default. That request is governed by Federal Rule of Civil Procedure 55(c) made applicable by Federal Rule of Bankruptcy Procedure 7055. Rule 55(c) permits the court to "set aside an entry of default for good cause." FED. R. CIV. P. 55(c); FED. R. BANKR. P. 7055.

The standard for setting aside a default is the same standard used in determining whether to set aside a default judgment except that, in the case of a default, the court has broader discretion and greater flexibility. *Brady v. United States*, 211 F.3d 499, 504 (9th Cir. 2000).

The court considers three factors in evaluating whether "good cause" is established: (1) whether the moving party engaged in culpable conduct that led to the default; (2) whether the moving party had no meritorious defense; or (3) whether reopening the default would prejudice the other party. *United States v. Signed Personal Check #730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citations omitted). Defendant, as the moving party, bears the burden of proof to show that "good cause" exists to set the default aside. *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004).

Plaintiff's opposition only addresses one of the three "good cause" factors, namely, culpability. The court therefore assumes that defendant has demonstrated - and plaintiff concedes that defendant has demonstrated - a meritorious defense and the absence of prejudice if the default were to be set aside. Nevertheless, because the "good cause" standard is in the disjunctive, a finding that any one of the factors is true is a sufficient reason for the court to refuse to set aside the default. *Mesle*, 615 F.3d at 1091 (citations omitted). Accordingly, the court focuses solely on the defendant's culpability.

The Ninth Circuit in *Mesle* noted a distinction in the culpability standard which depends on the defendant's status as a "legally sophisticated entity or individual." *Id.* at 1092-93; see also *CWT Canada II LP v. Danzik*, 2017 WL 1437557, *2 (D. Ariz. 2017) (recognizing *Mesle's* two culpability standards and noting that applicable standard depends on whether or not defendant is or is not "legally sophisticated").

If the defendant is not a legally sophisticated entity or individual its "conduct is culpable if [it] has received actual or constructive notice of the filing of the action

and *intentionally* failed to answer.” *Mesle*, 615 F.3d at 1093 (emphasis in original). In this context, “intentionally” means that the defendant cannot be treated as culpable simply for having made a conscious choice not to answer. *Id.* at 1092. Rather, to treat the failure to answer as culpable the defendant must have acted with bad faith or, in other words, there must be no explanation of the default inconsistent with a devious, deliberate or wilful failure to respond. *Id.*

If, on the other hand, the defendant is a legally sophisticated entity or individual intentionality is presumed and the failure to respond is culpable “[i]f [the] defendant has received actual or constructive notice of the filing of the action and failed to answer[.]” *Id.* at 1093. As the Ninth Circuit explained, in the case of a legally sophisticated entity or individual an understanding of the consequences of not answering may be assumed and, with it, intentionality. *Id.*

What then is a legally sophisticated entity or individual for purposes of the culpability factor in the “good cause” standard? The court in *CWT Canada*, *supra*, concluded that “[a] party is legally sophisticated when it has experience in lawsuits involving issues similar to those in the current litigation.” *CWT Canada*, 2017 WL 1437557, * 2; *accord NordAq Energy, Inc. v. Devine*, 2017 WL 9854543, *3 & n.28 (D. Alaska 2017) (“A defendant is legally sophisticated when he or she has experience in lawsuits involving issues similar to those in the current litigation, is otherwise sufficiently familiar with the federal legal process, is admittedly well aware of the need to respond to service, or has consulted with counsel at the time of default.”). The Ninth Circuit in *Mesle* also provided two examples: (1) a lawyer; and (2) an entity whose counsel received notice of the action and then later tries to set aside a default. *Mesle*, 615 F.3d at 1093. Defendant fits at least two of these criteria.

First, defendant has significant experience in litigation involving issues involved in this adversary proceeding. Indeed, a substantial portion of the defendant’s motion is devoted to the argument that issues in this adversary proceeding are the same as those that were fully-briefed, hotly contested, vigorously litigated, and ultimately decided in the context of its stay relief motion filed in the plaintiff’s first Chapter 13 case. Defendant even goes so far as to argue that the stay relief proceedings in the plaintiff’s first Chapter 13 case eviscerated allegations in complaint filed in this adversary proceeding making the plaintiff’s claims no longer viable.

Second, the summons and complaint were served on defendant’s counsel. Defendant’s counsel who was served with the summons and complaint is the same counsel now representing defendant on the present motion to set aside the default.

In either case, the court concludes that defendant is a legally sophisticated entity. There is no dispute that the defendant received actual notice of this adversary proceeding and did not timely respond. Consequently, defendant’s conduct is culpable which means defendant has not established “good cause” to set aside its default. Therefore, defendant’s request for relief from its default entered on November 19, 2018, will be DENIED. But the analysis does not end there.

That defendant will not be relieved of its default does not necessarily mean that plaintiff is entitled to a default judgment in her favor if (or more likely when) that request is made. Before a default judgment is entered the court must still be satisfied that it is entering default judgment on at least a *prima facie* case of liability and damages. See *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

Plaintiff requested an extension of the time to file a motion for entry of a default judgment. Adv. Dkts. 22-25; see also Calendar Item #89. Because defendant will not be relieved of its default, plaintiff’s motion to extend the time to file a motion for entry of default judgment will be GRANTED and the time for plaintiff to file a motion for entry of default judgment will be extended. Defendant’s motion to set aside its default filed before the time for plaintiff to file a motion for entry of default judgment expired warrants the extension.

As noted above, the court recognizes (and plaintiff does not dispute) that defendant has presented a meritorious defense; specifically, that stay relief proceedings in the

plaintiff's first Chapter 13 case eviscerated allegations in the complaint making plaintiff's claims in this adversary proceeding no longer viable. However, the truth of factual allegations offered in support of a meritorious defense are not determined when the court decides a motion to set aside the default but, rather, are the subject of later litigation. *Mesle*, 615 F.3d at 1094. The "later litigation" in this case will be an evidentiary prove-up hearing as to liability and damages. See FED. R. CIV. P. 55(b)(2); FED. R. BANKR. P. 7055.

Therefore:

- (1) plaintiff shall file and serve any motion for entry of default judgment by **January 22, 2019**;
- (2) defendant may file and serve a response by **February 5, 2019**; and
- (3) plaintiff may file an optional reply by **February 12, 2019**.

An evidentiary hearing will be held on **March 4, 2019, at 9:30 a.m.** Local Rule 9017-1 shall apply.

One final and important note. Plaintiff is cautioned that if the court determines that plaintiff pursued claims that are no longer viable in this adversary proceeding as a result of issues decided or otherwise resolved in the plaintiff's Chapter 13 cases, the court will sanction plaintiff and her attorney, jointly and severally, under Fed. R. Bankr. P. 9011 and/or its inherent authority.² Sanctions may include, but are not necessarily limited to, awarding defendant its attorney's fees and costs related to the motion to set aside the default through the conclusion of the evidentiary prove-up hearing.

In any case, because plaintiff refused to stipulate to set aside the default and because defendant falls within the Ninth Circuit's culpability standard applicable to a legally sophisticated entity, the defendant's default cannot be set aside. That said, given the apparent strength of the defendant's meritorious defense, as Rule 55(b)(2) contemplates, an evidentiary prove-up hearing to "establish the truth of any allegation by evidence," Fed. R. Civ. P. 55(b)(2)(C), and to "investigate any other matter," Fed. R. Civ. P. 55(b)(2)(D), is appropriate. See *Valley Oak Credit Union v. Villegas (In re Villegas)*, 132 B.R. 742, 746 (9th Cir. BAP 1991) (trial court has broad discretion as to the nature of the hearing it will hold pursuant to Rule 55(b)(2) in determining whether to enter a default judgment, even as to liability). And although it is typically the case that well-pled allegations in a complaint may be taken as true, under Civil Rule 55(b)(2) "Bankruptcy courts are accordingly provided the discretion to require proof of the facts necessary to determine a valid claim for relief against the defaulting parties." *Wells Fargo Bank v. Beltran (In re Beltran)*, 182 B.R. 820, 824 (9th Cir. BAP 1995). And that is precisely what the court will require here in exercise of its discretion.

THE COURT WILL ISSUE A MINUTE ORDER DENYING DEFENDANT'S MOTION AND A SEPARATE ORDER SETTING THE EVIDENTIARY HEARING REFERENCED HEREINABOVE.

²For example, with both Chapter 13 cases now dismissed one wonders how defendant could be ordered under § 542(a) to turnover property of the estate when there no longer is an estate vested with any property. See 11 U.S.C. § 349(b)(3); *Koo v. VNO Shops on the Lake (In re Koo)*, 2013 WL 5460138, *2 (9th Cir. BAP 2013) ("With the dismissal of a bankruptcy case, property of the bankruptcy estate reverts in the debtor (or other entity that owned the estate property prepetition). See § 349(b)(3). The dismissal order terminates the bankruptcy estate."). Or how there can be a violation of § 362(a) when the court has determined in a final ruling that was not appealed that the automatic stay was inapplicable in the first instance. See *In Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120 (9th Cir. 2016).

26. [18-26332](#)-B-13 ANTONIO/REMEDIOS SOLOMON MOTION FOR RELIEF FROM
[APN](#)-1 Mikalah R. Liviakis AUTOMATIC STAY
11-30-18 [[20](#)]
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 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 deny as moot 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 Rav4 VIN JTMWFREV5HD093264 ("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 Antonio and Remedios Soloman ("Debtors") have not made 1 post-petition payment, with a total of \$416.15 in post-petition payments past due. Movant also points to Debtors' plan, which proposes to surrender the Vehicle in satisfaction of Movant's claim. Dkt. 4, p. 4.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$16,229.60, as stated in the Spooner Declaration (dkt. 22, p. 3), while the value of the Vehicle is determined to be \$20,000.00, as stated in Schedules A/B and D filed by Debtors (dkt. 1, p. 11).

Discussion

The court's decision is to deny the motion as moot, as the plan was confirmed on December 30, 2018, and provides that the Vehicle reverted in Debtor, thus terminating the stay. *See* 11 U.S.C. §§ 362(c)(1), 1327(b); dkt. 30. Further, Section 3.11 of the plan states "(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral." Thus, the plan requires Debtors to surrender the Vehicle. On these grounds, this motion is now moot.

No other or additional relief is granted by the court.

THE COURT WILL PREPARE A MINUTE ORDER.

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 Victoria Jimenez 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.

28. [16-20037](#)-B-13 JACK/STACEY MARTINEZ MOTION TO MODIFY PLAN
[WSS](#)-4 W. Steven Shumway 11-14-18 [[96](#)]

No Ruling

29. [18-27137](#)-B-13 SHANNON GENZEL
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-18-18 [[20](#)]

No Ruling

30. [18-26638](#)-B-13 GREGOIRE TONOUKOUIN
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[18](#)]

No Ruling

31. [18-26640](#)-B-13 JILL ROBERTS-WILSON
[JPJ](#)-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[16](#)]

No Ruling

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 9 of Unifund CCR and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests that the court disallow the claim of Unifund CCR ("Creditor"), Claim No. 9. The claim is asserted to be a credit account for unsecured debt in the amount of \$841.76. Trustee objects on the grounds that Creditor failed to file the separate statement required by Federal Rule of Bankruptcy Procedure 3001(c)(3).

Discussion

The starting place is Rule 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). This rule creates an evidentiary presumption of validity for a properly filed proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

However, in situations in which a proof of claim is not properly filed, it is not entitled to a presumption of validity and the burden of proof is on creditor. *In re Santiago*, 404 B.R. 464, 570 (Bankr. S.D. Fla. 2009). In those instances, a Chapter 13 debtor need only object to the proof of claim on a basis provided § 502(b) and, upon a proper objection, the burden of proof rests with the creditor to establish validity of its claim. *In re Mazzyk*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014); *In re Porter*, 374 B.R. 471, 483 (Bankr. D. Conn. 2007).

In this case, Creditor's proof of claim is not a properly filed proof of claim because Creditor failed to include the separate statement required by Federal Rule of Bankruptcy Procedure 3001(c)(3).

Stripped of its presumptive validity, the court construes Trustee's objection to Creditor's proof of claim as one under § 502(b)(1), *i.e.*, that the claim is unenforceable against the debtor, and therefore a valid objection. And because Creditor's proof of claim is incomplete, and based on Creditor's failure to oppose the objection, the court cannot conclude that Creditor carried its burden of proving the validity of its claim.

Therefore, for the foregoing reasons, Trustee's objection is sustained and Creditor's claim is disallowed. However, disallowance of Creditor's claim is without prejudice to the filing of an amended proof of claim and a motion for reconsideration of the disallowance based on the amended proof of claim within fourteen (14) days of the date

on which an order disallowing Creditor's claim entered. See 11 U.S.C. § 502(j); FED. R. BANKR. P. 3008.

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

33. [18-26641](#)-B-13 VASILIOS/SOFIA TSIGARIS OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Marc A. Caraska PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[17](#)]

No Ruling

34. [18-25342](#)-B-13 REECE/RODINA VENTURA
[CLH](#)-4 Peter G. Macaluso

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
12-3-18 [[45](#)]

Final Decision

Before the court is a *Motion to Extend Time to File Adversary to Object to Discharge of Debt* filed by creditors Benjamin Zamora Villanueva and Adela Bon Gaunia ("Creditors"). Dkt 45. Despite its caption, Creditors seek an extension of the deadlines to file a complaint objecting to: (1) the dischargeability of debt(s) under 11 U.S.C. § 523(a); and (2) discharge under 11 U.S.C. § 727(a). The motion is opposed by debtors Reece and Rodina Ventura ("Debtors"). Dkt. 63.

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

Because oral argument will not assist the court in its resolution of this matter, the court issues this decision as a Final Ruling. See LBR 9014-1(h). Findings of fact and conclusions of law are set forth below. See FED. R. CIV. P. 52(a); FED. R. BANKR. P. 7052, 9014(c).

The motion will be granted in part and denied in part.

Background

Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on August 24, 2018. Dkt 1. The deadline to object to dischargeability and discharge was set as December 3, 2018. Dkt 14. Creditors moved on December 3, 2018, to extend that deadline to February 25, 2019. Dkt 45. A certificate of service that reflects a December 3, 2018, service date was filed on December 5, 2018. Dkt 49.

Discussion

As an initial matter, Creditors' request for an extension of the deadline to file a § 727(a) complaint objecting to the Debtors' discharge is denied with prejudice. Section 727(a) does not apply in a Chapter 13 case. Since § 727(a) falls within Subchapter II of Chapter 7, it applies only in a Chapter 7 case. See 11 U.S.C. § 103(b) (providing that "[s]ubchapters I and II of chapter 7 of this title apply only in a case under such chapter"); see also *In re McCracken*, 586 B.R. 247, 260 (Bankr. S.D. Tex. 2018); *In re Yotis*, 521 B.R. 625, 639-40 (Bankr. N.D. Ill. 2014).

That leaves the request for an extension of the § 523 bar date, which will be granted. Bankruptcy Rule 4007(c) permits the court to extend, for cause, the deadline to file a § 523 complaint objecting to dischargeability if the motion to extend the bar date is filed before the bar date expires.¹ That standard is met.

Creditors' motion was filed on December 3, 2018, which means it is timely under Rule 4007(c). Debtors' suggestion to the contrary because the certificate of service associated with the motion was not filed until December 5, 2018, is without merit. Consistent with Local Bankruptcy Rule 9014-1(e)(1), the certificate of service reflects that the motion and related documents were served on the same day they were filed, i.e., December 3, 2018. And consistent with Local Bankruptcy Rule 9014-1(e)(2), the certificate of service was filed within 3 days after the motion and related documents

¹On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under [§ 523]. The motion shall be filed before the time has expired." FED. R. BANKR. P. 4007(c).

were filed.

Creditors have also demonstrated cause for the extension requested in that their request is consistent with the standard for cause articulated in *Moreno v. Newton (In re Newton)*, 1995 WL 251136 (9th Cir. 1995). In analyzing the question of what constitutes cause for an extension under Bankruptcy Rule 4007, the Ninth Circuit in *Newton* adopted the factors articulated by an Oklahoma bankruptcy court: “(1) whether granting the delay will prejudice the debtor and (2) the length of the delay and its impact on efficient court administration.” *Id.* at *2 (quoting *In re Sturgis*, 46 B.R. 360, 365 (Bankr. W.D. Okla. 1985)).

The brief extension sought by Creditors will not significantly impact the efficient administration of this case. This case was only recently filed. No plan has yet been confirmed. And based on the Debtors failure to provide accurate information and cooperate with the Chapter 13 Trustee, it seems the Debtors may have significant difficulty confirming a plan. See dkt. 32, 65.

The Debtors will also not be prejudiced by a brief extension necessitated by their own conduct. Debtors’ incomplete document production in response to Creditors’ pre-bar date subpoenas is in large part responsible for Creditors’ inability to complete an investigation of their claim(s) before – and therefore the need to continue 2004 examinations after – the December 3, 2018, bar date. See *In re McCormack*, 244 B.R. 203 (D. Conn. 2004) (finding cause for an extension where the creditor had not been able to obtain discovery due in part to the debtor’s counsel’s non-responsiveness); *In re Schultz*, 134 B.R. 604 (E.D. Mich. 1991) (debtor’s counsel’s responsiveness to discovery relevant for determining whether cause existed for an extension under Rule 4007(c)).

Conclusion

For the foregoing reasons, Creditors’ motion is denied to the extent it requests an extension of the bar to file a § 727(a) complaint and granted to the extent it requests an extension of the bar date to file a § 523(a) complaint. The bar date for filing a § 523(a) complaint is extended to February 25, 2019.

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

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 value the secured claim of Safe Credit Union at \$6,000.00.

Debtors' Motion to Value

Debtors Tyrone and Rebecca Damon ("Debtors") filed a motion to value the secured claim of Safe Credit Union ("Creditor"), which is accompanied by Debtors' declaration. Debtors are the owners of a 2011 Toyota Rav4 SUV VIN 2T3ZF4DV9BW072462 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$4,000.00 as of the petition filing date. As the owner, Debtor's 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. 12 filed by Safe Credit Union is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. FED. R. BANKR. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. See *Litton*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009).

Proof of Claim No. 12 filed by Creditor states a balance owed of \$7,060.77 and a value of the Vehicle at \$6,000.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at \$6,000.00 based on Proof of Claim No. 12.

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

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). The court will address the merits of the motion at the hearing.

The court's decision is to continue this matter to February 19, 2019, at 1:00 p.m. to allow for proper service of the motion on all parties in interest.

Discussion

Local Bankruptcy Rule 2002-1(c) requires notice to the Internal Revenue Service ("IRS") in all adversary proceedings and contested matters at the following addresses:

United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044;

United States Attorney as specified in LBR 2002-1(a) above; and

Internal Revenue Service at the addresses specified on the Roster of Governmental Agencies maintained by the Clerk.

A review of the certificate of service for the motion to confirm of debtors Michael and Candace Todd ("Debtors") shows that the IRS was only served at the address on the Roster of Governmental Agencies. Dkt. 44.

In similar circumstances, this court has continued matters when service was not sufficient and provided the moving party with an opportunity to re-serve in compliance with the Bankruptcy Rules. 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 Debtors, the court will continue the hearing on the Debtors' motion to permit the Debtors to properly serve all parties in interest rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtors' motion filed at BLG-1 currently set to be heard on January 8, 2019, at 1:00 p.m. will be continued to February 19, 2019, at 1:00 p.m. The Debtors shall serve all parties in interest in the manner required by Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-1 by January 15, 2019.

THE COURT WILL PREPARE A MINUTE ORDER.

37. [18-26946](#)-B-13 JEFFERY HARRISON
[JPJ](#)-1 George T. Burke

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-18-18 [[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.

First, debtor Jeffery Harrison ("Debtor") has not provided Jan Johnson, the Chapter 13 trustee ("Trustee"), with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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

The plan filed November 16, 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.

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, debtor Randle Hodge ("Debtor") is delinquent to Jan Johnson, the Chapter 13 trustee ("Trustee"), in the amount of \$1,000.00, which represents approximately 1 plan payment. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Further, based on this delinquency, Trustee was unable to pay the Class 1 claim of Ocwen Loan Servicing for the month of November, as required by Section 3.07(b) of the proposed plan.

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

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

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

Fifth, the plan payment in the amount of \$1,100.00 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. Trustee argues that the plan payment should be no less than \$1,100.00. The plan does not comply with Section 5.2 of the mandatory form plan.

Sixth, Debtor proposed a plan that will pay \$0.00 to general unsecured creditors, while Trustee estimates, after a review of Schedules A/B and C, that Debtor has \$184,710.00 of non-exempt equity. Thus, Trustee asserts that the plan does not comply with 11 U.S.C. § 1325(a)(4).

Seventh, Debtor filed a Statement of Financial Affairs on November 19, 2018, that does not comply with the Official Bankruptcy Form approved by the Judicial Conference effective December 1, 2015.

The plan filed November 19, 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.

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.¹ 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, while Creditor Wells Fargo Bank, N.A. ("Creditor") has not filed a proof of claim in this case and the deadline to file is January 11, 2019 (dkt. 9), Creditor argues that they advised debtor Laurie Cotenass ("Debtor") that there are pre-petition arrears of \$12,991.90 for the delinquent mortgage installments from April 1, 2018, through November 1, 2018, totaling \$9,367.20, plus \$3,624.70 in prepetition mortgage fees, advances, and expenses. Creditor objects to confirmation pursuant to 11 U.S.C. § 1322(b)(5) until the pre-petition arrears are cured through the plan.

Second, Creditor has reviewed Debtor's Schedule I and notes that \$1,700.00 is listed as "Contribution from adult children, tenant." Creditor asserts that, without additional evidence that this contribution will continue through the life of the plan, Debtor has not met her burden that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

The plan filed November 2, 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.

¹The court notes that the Notice of Hearing states this matter is before "the Honorable Michael S. McManus . . . Courtroom 28, Seventh Floor." This notice was filed and served December 11, 2018. Dkt. 14, 17. For all future matters, this case was reassigned on December 11, 2018, to Judge Christopher D. Jaime in Courtroom 32, as reflected on the court's docket.

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 Angela Brace 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.

41. [18-24150](#)-B-13 STEVEN ADAMS
[PGM](#)-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-4-18 [[76](#)]

No Ruling

42. [18-26452](#)-B-7 DAVID CASTILLO
[JPJ](#)-2 Justin K. Kuney

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-4-18 [[21](#)]

Final Ruling

The court's decision is to overrule the objection as moot, as a notice of conversion was filed on December 12, 2018. Dkt. 34.

THE COURT WILL PREPARE A MINUTE ORDER.

43. [18-26852](#)-B-13 JIMMY SANTOS AND JULIE OBJECTION TO CONFIRMATION OF
[JHW](#)-1 MAGHONEY SANTOS PLAN BY CREDIT ACCEPTANCE
Thru #45 Peter L. Cianchetta CORPORATION
11-29-18 [[26](#)]

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 Credit Acceptance Corporation ("Creditor") objects because the plan does not provide sufficient interest.

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., December 30, 2018, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.50%. Here, the plan proposes a 5.25% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. *Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, a debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

Based on the above, the court sustains the objection as to increasing the interest rate. However, the objection is overruled as to setting the interest rate at 7.25% because the plan is not confirmable as discussed in line item #44 below.

Second, Creditor asserts that it has a purchase money security interest, while the plan states that its claim is not secured by a purchase money security interest. Creditor objects to this treatment, and requests Debtors amend their plan accordingly.

The plan filed October 31, 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.

44. [18-26852](#)-B-13 JIMMY SANTOS AND JULIE OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 MAGHONEY SANTOS PLAN BY JAN P. JOHNSON
Peter L. Cianchetta 12-12-18 [[41](#)]

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, debtors Jimmy and Julie Santos ("Debtors") failed to provide proof of their social security numbers as required by Federal Rule of Bankruptcy Procedure 4002(b)(1)(B). Debtors have not complied with their duties under 11 U.S.C. § 521(a)(3).

Second, Debtors are delinquent to Jan Johnson, the Chapter 13 trustee ("Trustee"), in the amount of \$1,019.83, which represents approximately 1 plan payment. 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 maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankruptcy Rule 2016-1. Debtors' attorney's fees of \$4,124.00 exceed this amount.

Fourth, feasibility of the plan depends on the granting of motions to value collateral of creditors Credit Acceptance and Wheels Financial Group dba Loan Mart. To date, Debtor has not filed, served, or set for hearing valuation motions pursuant to Local Bankruptcy Rule 3015-1(i).

Fifth, Mr. Santos testified at the Meeting of Creditors that his 401k loan would only be repaid through the first year of the plan. Until Debtors commit to paying that reduced amount of expenses into the plan, Trustee argues that Debtors are not putting forth their best efforts as required by 11 U.S.C. § 1325(a)(3).

Sixth, Trustee asserts that Debtors did not complete Form 122C-1 correctly as "the form does not list the correct income for Debtors." Dkt. 41, ¶ 7. Trustee states that he requested that Debtors amend Form 122C-1 to properly show they are above the median income, and argues that Debtors have failed to comply with 11 U.S.C. § 521(a)(3) until they file an amended Form 122C-1.

The plan filed October 31, 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.

45.	18-26852 -B-13	JIMMY SANTOS AND JULIE	CONTINUED MOTION TO EXTEND
	PLC -1	MAGHONEY SANTOS	AUTOMATIC STAY
		Peter L. Cianchetta	11-20-18 [18]

Tentative Ruling

The motion was originally set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3), and continued to allow for proper service as described below. 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 grant the motion and extend the automatic stay, subject to the limitations provided in the order dated November 26, 2018.

Debtor's Motion to Extend Stay

Debtors Jimmy and Julie Santos ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on September 10, 2018, due to failure to timely file documents (case no. 18-25271, dkt. 11 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

November 26, 2018 Hearing

After the court granted the order to shorten time for notice on the matter, the hearing was continued to allow for service on all parties in interest. Dkt. 24. The court extended the automatic stay upon two conditions: first, that the hearing on the motion to extend the stay would be continued to December 10, 2018; and second, that a plan must be confirmed within 75 days, or else the stay would expire without further notice or hearing.

December 10, 2018 Hearing

This matter was continued to January 8, 2018, because the case was reassigned on November 29, 2018.

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if (1) a debtor failed to file or amend the petition or other documents as required by Title 11 without substantial excuse, or (2) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(II)(aa) and (III). The presumption of bad faith may be rebutted by clear and convincing evidence, but mere inadvertence or negligence is not a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney. *Id.* at § 362(c)(3)(C) and (C)(i)(II)(aa).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008).

Debtors assert that the prior case was dismissed because they hired a tax return preparer to complete their unfiled returns, but those returns were not completed in time to file them with the court. Based on that failure, they allowed the case to be dismissed and hired a new preparer to complete those tax returns. Debtors intend to provide copies of those returns once they are completed. Dkt. 33.

Absent further argument or evidence from any other party in interest, Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, subject to the condition imposed in the order dated November 26, 2018 that Debtors must confirm a plan within 75 days.

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

46. [18-24853](#)-B-13 RAFAEL/MARSHA ESPINOSA
[JPJ](#)-2 Yasha Rahimzadeh

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
12-7-18 [[49](#)]

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 convert this case to Chapter 7, and deny the motion to dismiss as moot.

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests the case be converted to one under Chapter 7 or, in the alternative, that the case be dismissed.

Debtors Rafael and Marsha Espinosa ("Debtors") have failed to prosecute this case by filing an amended plan after Trustee's objection to confirmation was sustained on October 9, 2018. Dkt. 35. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Trustee's review of Schedules A/B and C shows the total value of non-exempt property in the estate is \$9,627.22. Thus, Trustee argues that converting this case to a Chapter 7 proceeding is in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

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

47. [18-26755](#)-B-13 LISA ATZ
[JPJ](#)-1 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-12-18 [[12](#)]

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.

The sole objection raised by Jan Johnson, the Chapter 13 trustee, is that the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankruptcy Rule 2016-1, while the plan proposed by debtor Lisa Atz provides attorneys fees of \$6,000.00. Dkt. 2. Debtor's attorney's fees exceed this amount.

The plan filed October 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.

48. [18-24656](#)-B-13 BACHAR ALBOKAI
[JPJ](#)-2 Lucas B. Garcia

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
12-7-18 [[39](#)]

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 convert this case to Chapter 7, and deny the motion to dismiss as moot.

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests the case be converted to one under Chapter 7 or, in the alternative, that the case be dismissed.

Debtor Bachar Albokai ("Debtor") failed to prosecute this case by filing a second amended plan after Trustee's objection to confirmation was sustained on November 14, 2018. Dkt. 38. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).¹

Trustee's review of Schedules A/B and C shows the total value of non-exempt property in the estate is \$15,150.00. Thus, Trustee argues that converting this case to a Chapter 7 proceeding is in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c). The court agrees.

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

¹The court notes that an amended plan was filed on December 7, 2018, with a confirmation hearing set for January 15, 2018. Dkt. 48. However, Trustee filed an opposition noting several deficiencies, including Debtor being delinquent \$3,750.00, or approximately 1 plan payment, as of December 27, 2018. Dkt. 53, ¶ 4. This is noteworthy because, based on Debtor's failure to oppose this motion, it appears Debtor filed a second amended plan simply to delay any conversion or dismissal, rather than in a good faith effort to prosecute a reorganization under Chapter 13.

49. [18-25756](#)-B-13 DAVID SIMS
[PGM](#)-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
11-7-18 [[32](#)]

No Ruling

50. [18-21957](#)-B-13 WILLIAM AMARAL
[PGM](#)-7 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-1-18 [[159](#)]

No Ruling

51. [16-24559](#)-B-13 STEVEN SIPE
[LES](#)-1 Lucas B. Garcia

MOTION TO AMEND FINDINGS AND
CONCLUSIONS AND/OR MOTION AMEND
JUDGMENT
11-13-18 [[145](#)]

Final Ruling

The court has determined that oral argument will not assist in the resolution of the motion. See LBR 9014-1(h). A memorandum and order will issue. Removed from calendar. No appearance necessary.

52. [18-26560](#)-B-13 DOMINGO/MARLA VICTORIO
[JPJ](#)-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[15](#)]

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.

There being no other objection to confirmation, the plan filed October 18, 2018, will be confirmed.

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

53. [18-26862](#)-B-13 TRENELL MONTAGUE
[JPJ-1](#) Susan B. Terrado
Thru #54

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[29](#)]

Tentative Ruling

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

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

Subsequent to the filing of the objection by Jan Johnson, the Chapter 13 trustee, debtor Trenell Montague filed a second amended plan on December 29, 2018. Dkt. 35. The confirmation hearing for the amended plan is scheduled for February 19, 2019. Dkt. 38. The earlier plan filed November 16, 2018, is not confirmed.

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

54. [18-26862](#)-B-13 TRENELL MONTAGUE
[SW-1](#) Susan B. Terrado

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY BANK
12-6-18 [[24](#)]

Tentative Ruling

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

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

Subsequent to the filing of creditor Ally Bank's objection, debtor Trenell Montague filed a second amended plan on December 29, 2018. Dkt. 35. The confirmation hearing for the amended plan is scheduled for February 19, 2019. Dkt. 38. The earlier plan filed November 16, 2018, is not confirmed.

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

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). The court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Travis Credit Union at \$14,897.48.

Debtor Ashley Solberg ("Debtor") filed a motion to value the secured claim of Travis Credit Union ("Creditor"), which is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford Fusion with approximately 10,200 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,793.00 as of the petition filing date. As the owner, Debtor's 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. 2 filed by Travis Credit Union is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. FED. R. BANKR. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. See *Litton*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

Proof of Claim No. 2 filed by Creditor states a balance owed of \$14,897.48 and a value of the Vehicle of \$14,897.48. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at \$14,897.48 based on Proof of Claim No. 2.

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

56. [18-26564](#)-B-13 DESMAL MATTHEWS
[CJO](#)-1 Pro Se
Thru #57

OBJECTION TO CONFIRMATION OF
PLAN BY CALIBER HOME LOANS,
INC.
12-11-18 [[22](#)]

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 Caliber Home Loans, Inc., as servicer for U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("Creditor"), argues that the plan does not comply with 11 U.S.C. §§ 1322(b)(2) and (5), and 1325, because the plan does not propose to cure \$356,083.78 of pre-petition arrears due, and does not provide for ongoing post-petition monthly mortgage payments. Creditor asserts that debtor Desmal Matthews ("Debtor") disputes the debt owed and intends to file an objection to claim to challenge the claim's validity after a proof of claim is filed by Creditor. No evidence, was filed with Creditor's objection. Dkt. 22. A review of the court's claims registry shows that Proof of Claim No. 2 was filed by Creditor on December 20, 2018.

Second, Creditor argues that Debtor's Schedules I and J show disposable income of \$2,085.67 per month, while the plan payment must be at least \$5,934.72 to pay Creditor's claim. Thus, Debtor cannot propose a feasible plan with the income and expenses provided.

The plan filed November 1, 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.

57. [18-26564](#)-B-13 DESMAL MATTHEWS
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-12-18 [[25](#)]

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, debtor Desmal Matthews ("Debtor") did not appear at the meeting of creditors set for December 6, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$250.00, which represents approximately 1 plan payment. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, feasibility of the plan depends on the granting of a motion to value collateral of Mather Homeowners Association. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankruptcy Rule 3015-1(i).

Fourth, Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses, despite listing \$300.00 of rental property and/or business income on Schedule I.

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

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

Seventh, Debtor has not filed an amended petition to provide the correct filing date from a previous case. Until the amended petition is filed, Debtor has not complied with 11 U.S.C. § 521(a) (3).

Eighth, the Debtor has claimed an interest in vehicles as exempt under California Code of Civil Procedure § 703.140(b). While Trustee objected based on Debtor not filing the required spousal waiver, Debtor has since filed the waiver. Dkt. 48.

Ninth, based on Trustee's review of Schedules A/B and C, Debtor has \$262,377.50 in non-exempt equity, while the plan proposes \$0.00 in payments to general unsecured creditors. Trustee further notes that he filed an Objection to Debtor's Claim of Exemptions, which will be heard on January 15, 2019. This objection, if sustained, will result in more non-exempt equity for the liquidation analysis pursuant to 11 U.S.C. § 1325(a) (4).

The plan filed November 1, 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.

58. [18-26664](#)-B-13 DEWAYNE DIXON
[AP-1](#) Mohammad M. Mokarram
Thru #59

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON TRUST,
NATIONAL ASSOCIATION
12-10-18 [[23](#)]

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 Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-HE2 ("Creditor") argues that the plan proposed by debtor Dewayne Dixon ("Debtor") is insufficient because it will only cure \$52,000.00 of pre-petition arrears, while Proof of Claim 2 shows \$60,205.74. Until the plan cures the pre-petition arrears in full, it cannot be confirmed under 11 U.S.C. § 1325(a)(5)(B)(ii).

Second, to cure the pre-petition arrears of \$60,205.74 within the 60-month commitment period of the plan, Creditor argues that the minimum payment on arrears must be \$1,075.10. Otherwise, the plan is not confirmable under 11 U.S.C. § 1322(b)(5).

Third, Creditor argues that Debtor's Schedule J shows \$3,060.00 of projected disposable monthly income for the 60-month commitment period, but to cure the pre-petition arrears Debtor will need an additional \$146.53 per month along with an additional \$45.04 for the post-petition monthly mortgage payments. Because the plan is already committing all of Debtor's projected disposable income, Creditor argues Debtor cannot meet his burden to show the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

The plan filed October 23, 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.

59. [18-26664](#)-B-13 DEWAYNE DIXON
[JPJ-2](#) Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[26](#)]

No Ruling

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 Kacee Perez 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.

61. [18-26670](#)-B-13 ROBERT/DOROTHY RUSSO OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 George T. Burke PLAN BY JAN P. JOHNSON
Thru #62 12-12-18 [[22](#)]

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.

Debtors Robert and Dorothy Russo ("Debtors") are delinquent to Jan Johnson, Chapter 13 trustee ("Trustee"), in the amount of \$4,269.00, which represents approximately 1 plan payment. 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). Further, due to Debtors' delinquency, Trustee did not have sufficient funds to pay Wells Fargo Home Mortgage, a Class 1 claim, in violation of Section 3.07(b) of Debtors' proposed plan.

The plan filed November 3, 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.

62. [18-26670](#)-B-13 ROBERT/DOROTHY RUSSO OBJECTION TO CONFIRMATION OF
[RAS](#)-1 George T. Burke PLAN BY REVERSE MORTGAGE
SOLUTIONS, INC.
12-6-18 [[19](#)]

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 overrule the objection as moot.

Creditor Urban Financial Group of America, LLC ("Creditor") objects to confirmation because its claim is not provided for in the plan filed by debtors Robert and Dorothy Russo ("Debtors"). Creditor generally cites to 11 U.S.C. § 1325 in support of its argument that "the Debtors' failure to provide for the treatment of all secured claim [sic] could indicate that the Debtors either cannot afford the payments call [sic] for under the Plan because they have additional debtors [sic], or that the Debtors want to conceal the proposed treatment of a creditor." Dkt. 19, p. 2, lns. 23-25. No evidence was offered in support of its argument.

As noted in line item #61 above, the plan filed November 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled as moot.

THE COURT WILL PREPARE A MINUTE ORDER.

63. [18-26675](#)-B-13 TIFFANY BAILEY
[JPJ](#)-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-18-18 [[31](#)]

No Ruling

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 Terry Smith ("Debtor") filed a motion to modify plan on November 23, 2018, to lower his monthly payments, and cure delinquencies under the prior plan, due to a mortgage payment increasing and changes in the income of Debtor and his non-filing spouse. Dkt. 48, ¶ 2; dkt. 50, pp. 4-7 (Amended Schedules I and J).

However, the modified plan proposed by Debtor is not on the updated Form EDC 3-080, revised November 9, 2018, as required by General Order 13-08. See dkt. 47. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(1).

The plan filed November 23, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a), and is not confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

65. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO CONFIRM PLAN
[FF-10](#) Gary Ray Fraley 11-27-18 [[87](#)]

Thru #72

DEBTOR DISMISSED:

11/20/2018

JOINT DEBTOR DISMISSED:

11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

66. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF CACH,
[FF-2](#) Gary Ray Fraley LLC
11-27-18 [[38](#)]

DEBTOR DISMISSED:

11/20/2018

JOINT DEBTOR DISMISSED:

11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

67. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF GCFS,
[FF-3](#) Gary Ray Fraley INC.
11-27-18 [[45](#)]

DEBTOR DISMISSED:

11/20/2018

JOINT DEBTOR DISMISSED:

11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

68. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF KELKRIS
[FF-4](#) Gary Ray Fraley ASSOCIATES, INC.
11-27-18 [[73](#)]

DEBTOR DISMISSED:
11/20/2018
JOINT DEBTOR DISMISSED:
11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

69. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF
[FF-5](#) Gary Ray Fraley HOUSEHOLD FINANCE CORP.
11-27-18 [[66](#)]

DEBTOR DISMISSED:
11/20/2018
JOINT DEBTOR DISMISSED:
11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

70. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF CHASE
[FF-6](#) Gary Ray Fraley BANK USA, N.A.
11-27-18 [[80](#)]

DEBTOR DISMISSED:
11/20/2018
JOINT DEBTOR DISMISSED:
11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

71. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF
[FF-6](#) Gary Ray Fraley DICKINSON FINANCIAL, LLC
11-27-18 [[52](#)]

DEBTOR DISMISSED:
11/20/2018
JOINT DEBTOR DISMISSED:

11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

72. [18-23980](#)-B-13 LAURA/DONALD ENGLAND MOTION TO AVOID LIEN OF
[FF-8](#) Gary Ray Fraley EMPLOYMENT DEVELOPMENT
DEPARTMENT
11-27-18 [[59](#)]

DEBTOR DISMISSED:

11/20/2018

JOINT DEBTOR DISMISSED:

11/20/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on November 20, 2018, and the motion to vacate dismissal was denied without prejudice on December 14, 2018. Dkts. 31, 93.

THE COURT WILL PREPARE A MINUTE ORDER.

73. [18-26684](#)-B-13 PEARLIE ABELEDA
[JPJ](#)-1 Ryan Keenan

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[14](#)]

Tentative Ruling

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

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

Subsequent to the filing of the objection and motion to dismiss by Jan Johnson, the Chapter 13 trustee, debtor Pearlle Abeleda filed amended plans on December 20, 2018, and December 22, 2018. Dkts. 20, 27. The confirmation hearing for the latest amended plan is scheduled for January 22, 2018. Thus, the earlier plan filed October 24, 2018, is not confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

74. [18-24587](#)-B-13 ANJANA/PARKESH KUMAR
[JPJ](#)-2 Marc Voisant

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7, MOTION
TO DISMISS CASE
12-7-18 [[25](#)]

Tentative Ruling

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

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

Subsequent to the filing of the objection by Jan Johnson, the Chapter 13 trustee, debtors Anjana and Parkesh Kumar filed an amended plan on December 22, 2018. Dkt. 27. The confirmation hearing for the amended plan is scheduled for January 22, 2018. Dkt. 25. The earlier plan filed October 24, 2018, is not confirmed.

THE COURT WILL PREPARE A MINUTE ORDER.

75. [18-26787](#)-B-13 HUMBERTO VIEYRA
[CJO](#)-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF
PLAN BY CALIBER HOME LOANS,
INC.
12-6-18 [[13](#)]

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 overrule the objection and order the plan confirmed.

Creditor Caliber Home Loans, Inc. ("Creditor") asserts that it holds a deed of trust secured by the residence of debtor Humberto Vieyra. The creditor asserts \$1,385.53 in pre-petition arrearages but has not yet filed a proof of claim. Creditor provided no evidence to support the basis for the claimed pre-petition arrears. Further, Creditor does not provide a declaration from any individual who maintains or controls the loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and, there being no other objections, the plan filed October 29, 2018 is confirmed.

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

76. [18-25589](#)-B-13 ROCHELLE WARD
[NSV](#)-2 Nima S. Vokshori

MOTION TO CONFIRM PLAN
11-7-18 [[33](#)]

No Ruling

77. [18-26289](#)-B-13 SURJIT KUMAR AND POONAM OBJECTION TO DEBTOR'S CLAIM OF
[JPJ](#)-2 KAUSHAL EXEMPTIONS
Peter G. Macaluso 11-30-18 [[16](#)]

Tentative Ruling

The objection has been set for hearing on at least 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to sustain the objection and disallow the claim of exemption as provided.

Trustee's Objection to Claim of Exemption

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an objection to the claim of exemption by debtors Surjit Kumar and Poonam Kaushal ("Debtors"). First, Trustee argues that the Bank of America business checking account, valued at \$6,000.00, does not meet the definition of a tool of trade under California Code of Civil Procedure § 704.060. Second, Trustee argues that Debtors, because they are self-employed and not earning wages, cannot claim \$9,450.00 of exempt funds in the Schools Financial Credit Union bank account under California Code of Civil Procedure § 704.070. Trustee argues that, based on Schedule I, Debtors may claim \$2,262.74 as exempt based on the wage income from USPS.

Debtors' Opposition

Debtors filed an opposition on December 20, 2018, and promised to file an amended Schedule C before the hearing. Dkt. 24.

Debtors' Amended Schedule C

Debtors filed the amended Schedule C on December 21, 2018. Dkt. 26. Debtors only reduced the claim of exemption on the Bank of America business account from \$6,000.00 to \$4,500.00. Compare dkt. 1, p. 19, and dkt. 26, p. 1.

Discussion

Based on Debtors' failure to lodge any evidence or argument in support of their claims of exemptions, the court agrees with Trustee's argument in regard to both claims of exemption because the Debtors have failed to carry their burden of proving, as the exemption claimants, they are entitled to the exemptions. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 334 (9th Cir. BAP 2016); *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

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

78. [18-26490](#)-B-13 SUZETTE PACILLAS-HICKEN OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Thomas L. Amberg PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-4-18 [[22](#)]

Thru #79

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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

Trustee's Objection to Confirmation

First, debtor Suzette Pacillas-Hicken ("Debtor") did not appear at the meeting of creditors set for November 29, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the plan fails to classify the secured claim of Bank of America, N.A., despite the nonstandard provisions that direct Jan Johnson, the Chapter 13 trustee ("Trustee"), to not disburse funds while the claim is being resolved.

Third, Trustee calculates the plan will take approximately 77 months to complete, which exceeds the maximum 60-month period under 11 U.S.C. § 1322(d) and in violation of 11 U.S.C. § 1325(b)(4).

Debtor's Response

Debtor filed a response on December 24, 2018. Dkt. 34. Debtor's response is essentially a non-opposition, as she believes that a new plan will resolve the objections. Debtor promises to file a new plan.

Discussion

The plan filed October 15, 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 the 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.

79. [18-26490](#)-B-13 SUZETTE PACILLAS-HICKEN OBJECTION TO CONFIRMATION OF
[RPZ](#)-1 Thomas L. Amberg PLAN BY BANK OF AMERICA, N.A.
12-6-18 [[26](#)]

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 overrule the objection as moot in light of its ruling at line item #78, above.

THE COURT WILL PREPARE A MINUTE ORDER.

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 Rhiannon Nichols ("Debtor") has filed evidence in support of confirmation.¹ 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.

¹The court notes that, while Debtor filed amended schedules concurrently with this motion, there are two documents titled "Schedule J" in the same docket entry along with copies of paystubs. Dkt. 48, pp. 5, 6, 9, 10. Both "Schedule J" documents reflect different incomes and expenses when compared to the originally filed Schedule J. Dkt. 11, pp. 29, 30. Neither Schedule J matches the income and expenses provided on the Summary of Assets and Liabilities. Dkt. 48, p. 1. Further, Debtor appears to have included a third amended Schedule J attached to the proposed modified plan as exhibits, along with other amended schedules. Dkt. 44, pp. 8-26. Despite these conflicting documents, Debtor's declaration provides the necessary evidentiary basis to grant this motion by summarizing her income and expenses. Dkt. 46, ¶¶ 9, 10.

81. [18-26693](#)-B-13 ANTHONY SIPPPIO
[DWE](#)-1 Lucas B. Garcia
Thru #82

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-13-18 [[28](#)]

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 U.S. Bank National Association ("Creditor") objects because the plan does not propose to cure the \$93,346.45 in pre-petition arrearages, as provided in Creditor's proof of claim filed December 13, 2018. POC 5, p. 2. Further, the plan does not maintain the post-petition payments, which Creditor calculates is \$3,516.44. Based on the objection filed showing that Creditor does not accept the plan, and because the plan does not provide for the surrender of the property securing Creditor's claim, the plan does not comply with 11 U.S.C. §§ 1322(b)(5) and 1325(a)(5).

Second, Creditor calculates that debtor Anthony Sippio ("Debtor") is proposing plan payments of \$4,050.00, while Debtor's schedules show monthly net income of only \$4,077.29. Creditor asserts that Debtor will not be able to propose a plan that is feasible under 11 U.S.C. § 1325(a)(6) after accounting for Creditor's pre-petition arrears and post-petition monthly payments.

The plan filed October 30, 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.

82. [18-26693](#)-B-13 ANTHONY SIPPPIO
[JPJ](#)-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-12-18 [[22](#)]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See 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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

First, Jan Johnson, the Chapter 13 trustee ("Trustee"), asserts that debtor Anthony Sippio ("Debtor") was delinquent, which caused Trustee to miss the November payment to Class 1 creditor Wells Fargo Home Mortgage in violation of Section 3.07(b) of the plan.

Second, the Debtor has claimed an interest in various personal property as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed the spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may

not claim exemptions under § 703.140(b) .

Third, feasibility of the plan depends on the granting of motions to value collateral of Wells Fargo Bank NA and Key Bank NA. To date, the Debtor has not filed, served, or set for hearing these valuation motions pursuant to Local Bankruptcy Rule 3015-1(i) .

Fourth, according to Schedule J,¹ Trustee argues that Debtor owes a domestic support obligation. Pursuant to Local Bankruptcy Rule 3015-1(b) (6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b) (6) and (d) (1). The Debtor has not complied with 11 U.S.C. § 521(a) (3) and Local Bankruptcy Rule 3015-1(c) (3) .

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

The plan filed October 24, 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.

¹The court notes that no domestic support obligation is listed on Schedule E/F. Dkt. 1, p. 26.

83. [18-26893](#)-B-13 ALFONSO YEPEZ GARCIA
[JPJ](#)-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-18-18 [[18](#)]

No Ruling

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). The court will address the merits of the motion at the hearing.

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

Procedural History and Debtor's Motion to Modify

Debtor Richard Schriver ("Debtor") filed a voluntary petition on October 17, 2014. Dkt. 1. A Second Amended Plan was confirmed on April 21, 2015. Dkt. 60. Debtor passed away on June 1, 2018, and successor-in-interest Jessie Schriver ("Successor") obtained permission to continue prosecuting this case. Dkt. 79.

Successor now moves to modify the plan and pay a lump sum, while reducing the term of the plan to 49 months, due to receiving life insurance proceeds. Dkt. 82, ¶¶ 9, 10. Debtor notes that she is willing to increase the lump sum payment to an amount needed to complete the Chapter 13 plan and obtain a discharge.

Discussion

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

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.

85. [18-26899](#)-B-13 NORA GONZALEZ
[JPJ](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-18-18 [[16](#)]

Final Ruling

Jan Johnson, the Chapter 13 trustee ("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.

There being no other objection to confirmation, the plan filed October 31, 2018, will be 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.

86. [18-26916](#)-B-13 JERIMIAH CANNADAY
[MSK](#)-1 W. Steven Shumway
See Also #12

OBJECTION TO CONFIRMATION OF
PLAN BY LAKEVIEW LOAN
SERVICING, LLC
12-20-18 [[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.

Creditor Lakeview Loan Servicing, LLC ("Creditor"), argues that the plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(ii) and (a)(6) because the plan only proposes to cure \$39,610.55 of the total \$64,586.98 in pre-petition arrears, as stated in Creditor's Proof of Claim No. 5. The court agrees.

The plan filed November 1, 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.

87. [18-27722](#)-B-13 CHAREL/ALMA WINSTON
[DAT](#)-1 David Barrett

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-21-18 [[23](#)]

PETER NGUYEN VS.
DEBTORS DISMISSED:
12/26/2018

Final Ruling

The court's decision is to deny the motion as moot, as the case was dismissed on December 26, 2018. Dkt. 29.

THE COURT WILL PREPARE A MINUTE ORDER.

88. [18-24424](#)-B-13 SULLAY DIN GABISI
[RDW](#)-2 Ronald W. Holland
See Also #15

OBJECTION TO CONFIRMATION OF
PLAN BY RICHARD W. ORSER LIVING
TRUST DATED FEBRUARY 14, 1991
AND RICHARD W. ORSER
12-24-18 [[39](#)]

No Ruling

89. [18-23232](#)-B-13 LINDA CATRON
[18-2149](#) EPE-1
CATRON V. 2614 SACRAMENTO
STREET, LLC
See Also #25

MOTION TO EXTEND TIME
12-19-18 [[22](#)]

Tentative Ruling

Granted for the reasons stated in the minutes related to the ruling at line item #25,
DCN MJR-1.

THE COURT WILL PREPARE A MINUTE ORDER.