UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 9, 2018 at 1:00 p.m.

1.	17-23400-B-13 JPJ-2	ANTHONY/LEETA HIGHTOWER Gerald B. Glazer	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 12-6-17 [50]

CASE DISMISSED: 12/28/17

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The case having been dismissed, the motion is dismissed as moot.

The court will enter an appropriate minute order.

2.	17-24500-B-13 MET-1 **Thru #3**	MICHAEL/ANTOINETTE CORTEZ Mary Ellen Terranella	OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM NUMBER 5 11-27-17 [31]

Tentative Ruling: The Objection to Allowance of Claim has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to overrule the objection to Claim No. 5-2 of Navy Federal Credit Union and the claim is not disallowed.

Debtors Michael Cortez and Antoinette Cortez ("Objector"), requests that the court disallow the claim of Navy Federal Credit Union ("Creditor"), Claim No. 5-2. The claim is asserted to be in the amount of $75,406.41. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

Creditor filed a response disputing that the statute of limitations has run. According to Creditor, in January 2007 Debtors took out a home equity line of credit in the sum of $110,000.00 against rental property located at 283 Miravista Way, Vallejo, CA 94589. The account was charged off in March 2013 due to nonpayment. Debtors then contacted Creditor and agreed to set up a recurring monthly payment of $100.00 via Western Union Speedpay through Debtors' Bank of America account. Payments were made from April 29, 2013, through December 30, 2013. Thereafter, Debtors continued to make monthly payments but at a reduced amount of $10.00 per month. The last valid payment on the account was received on September 28, 2017, in the amount of $10.00. *See* Exhibit A, Dkt. 46.

Discussion

According to the proof of claim, the underlying debt is a contract claim. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Creditor's exhibits, the last payment was received on or about September 28, 2017, which is within four years prior to the filing of this case. Hence, when the case was filed on July 8, 2017, this debt was not time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and should be allowed.

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). Here, the Debtors provide no evidence or documentation that contradicts the payment history submitted by the Creditor showing that Debtors made a $10.00 payment as recently as September 28, 2017.

Based on the evidence before the court, the Debtors' objection is overruled and Creditor's claim is allowed.

The court will enter an appropriate minute order.

3. 17-24500-B-13 MICHAEL/ANTOINETTE CORTEZ MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 11-28-17 [36]

Tentative Ruling: The Motion to Confirm Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The plan payment in the amount of $2,675.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $3,603.03. The plan does not comply with Section 4.02 of the mandatory form plan. However, the Trustee notes that if the Debtors' attorney is willing to lower her dividend per § 2.07 to $650.00 in months 1 through 5, the aggregate would work. Debtors' attorney has not filed a response as to whether she is willing to lower this dividend.

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

The court will enter an appropriate minute order.

4. 17-27902-B-13 ROSEMARY SIMMONS MOTION TO IMPOSE AUTOMATIC STAY
RJ-2 Richard L. Jare 12-26-17 [24]

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

The court's decision is to deny with prejudice the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed as to only Balihar Gill, Amandip Singh, and Amna LLC ("Respondents"). This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on April 3, 2017, after Debtor failed to appear at the meeting of creditors and failed to make plan payments (case no. 16-28056, dkts. 32, 35). The Debtor's second bankruptcy case was dismissed on October 25, 2017, after Debtor failed to timely file documents (case no. 17-26016, dkt. 41).

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor does not explain why the previous cases were filed nor why the instant case was filed. The court presumes, however, that the instant case was filed to prevent the foreclosure of Debtor's real property located at 9560 Moss Hill Way Sacramento, CA 95829, since this case was filed the very same day as the trustee's sale set for December 4, 2017.

Nor has the Debtor sufficiently explained how her circumstances have substantially changed such that the present plan will succeed. The Debtor provides no substantial excuse for why she failed to appear at the meeting of creditors, cure the delinquency in plan payments, or provide all necessary documents in her previous cases. Indeed, the Debtor should be aware of the duties required of debtors in a Chapter 13 proceeding since the Debtor had filed for Chapter 13 relief on October 10, 2007, and received a discharge on February 5, 2013.

Debtor's motion focuses on the fact that she quit claimed to her son Jonah Anderson a 1% interest in the Property, that this allegedly created a codebtor stay under 11 U.S.C. § 1301, and that the trustee's sale violated the codebtor stay.[1] However, Debtor fails to cite to any cases that support her belief that her son qualifies as a

[1] Debtor also separately asserts that the correct surplus from the trustee's sale owed to her exceeds $62,619.40.

codebtor. Bankruptcy Code §1301(a) bars collection of "all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt . . . ." 11 U.S.C. §1301(a), emphasis added. Debtor does not explain how her son was liable on the debt secured by the Property when Debtor was the sole borrower and sole signatory on the 2010 loan. *See* case no. 16-28056, Claim No. 11. Debtor also does not explain how her son secured the debt since Debtor was the sole trustor under the deed of trust that encumbered the Property. *See* case no. 16-28056, Claim No. 11.

The Debtor's very action of quit claiming a 1% interest in the Property to her son on December 3, 2017, the day before the scheduled trustee's sale, calls into question Debtor's good faith. Debtor knew on or about November 9, 2017, that the Property would be foreclosed on December 4, 2017. The Declaration of Rosemary Simmons also admits that there is no automatic stay in this bankruptcy since there have been two prior filings in the past 12 months.

It appears to the court that the Debtor implemented a scheme seeking to manufacture a codebtor stay by transferring a portion of the Property to her son. Despite this apparent transfer, Debtor's Statement of Financial Affairs filed January 2, 2018, states that the Debtor did not give any gifts valued at more than $600.00 to any person in the prior two years and did not sell, trade, or otherwise transfer any property in the prior two years. *See* dkt. 30. The court is not persuaded that the Debtor acted in good faith in the filing of this bankruptcy case.

In conclusion, the Debtor has offered no explanation from which the court can conclude that his financial or personal circumstances have changed substantially, and that the present case will be concluded with a confirmed plan that will be fully performed. Moreover, the Debtor has not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is denied with prejudice and the automatic stay is not imposed against the Respondents.

Although requested by Respondents, the court is not persuaded that Debtor's counsel's post-petition actions violated Fed. R. Bankr. P. 9011(b). The request for sanctions will be denied without prejudice.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

5. 14-22403-B-13 JESSICA HAMMONDS MOTION TO MODIFY PLAN
LC-3 Lorraine W. Crozier 11-17-17 [55]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on November 17, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

6. 17-27203-B-13 SETH/SHARLA MAXEY
JPJ-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [33]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, 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 November 28, 2017, will be confirmed.

The court will enter an appropriate minute order.

7. 17-27303-B-13 JAMES SEIBERT — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Peter L. Cianchetta — 12-12-17 [18]
Thru #8

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

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

First, the Debtor did not appear at the meeting of creditors set for December 7, 2017, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to January 4, 2018, and Debtor did not appear. The meeting of creditors has been continued again to February 1, 2018.

Second, 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. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, 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. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, this case and plan do not appear to be proposed in good faith since the Debtor has two pending non-dischargeability adversary proceedings filed against him (*see* adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor's case no. 17-24489 before the Honorable Ronald Sargis that was dismissed on November 7, 2017.

The plan filed November 2, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

8. 17-27303-B-13 JAMES SEIBERT — OBJECTION TO CONFIRMATION OF PLAN BY ROBERT SEIBERT, JR.
REL-1 Peter L. Cianchetta — 12-13-17 [22]

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

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

First, the Debtor does not appear to have the ability to fund the plan. Debtor's schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor's prior case no. 17-24489 before the Honorable Ronald Sargis. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (*see* adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor's case no. 17-24489 that was dismissed on

November 7, 2017.

The plan filed November 2, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

9. 17-24505-B-13 SUSAN HARRIS MOTION TO MODIFY PLAN
TLA-2 Thomas L. Amberg 11-17-17 [47]

CASE CONVERTED: 1/04/2018

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The case having been converted, the motion is dismissed as moot.

The court will enter an appropriate minute order.

10. 17-27412-B-13 JPJ-1 **Thru #11**
ENRIQUE/MICHELLE SERRATO
Mikalah R. Liviakis
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [32]

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

The matter will be determined at the scheduled hearing.

First, the plan payment in the amount of $2,650.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $3,357.12 in months 11 and 12. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, feasibility depends on the granting of the motion to value collateral of NeighborWorks HomeOwnership Center. That matter will be determined at the scheduled hearing at Item #11.

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

The court will enter an appropriate minute order.

11. 17-27412-B-13 MRL-1
ENRIQUE/MICHELLE SERRATO
Mikalah R. Liviakis
CONTINUED MOTION TO VALUE COLLATERAL OF NEIGHBORWORKS HOMEOWNERSHIP CENTER
11-9-17 [8]

Tentative Ruling: This matter was continued from December 12, 2017, as stipulated by the Debtors and NeighborWorks HomeOwnership Center to provide additional time to finalize a settlement.

The Motion to Value 8120 Hearthstone Place, Collateral of NeighborWorks HomeOwnership Center 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 having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

Debtors' motion to value the secured claim of NeighborWorks HomeOwnership Center ("Creditor") is accompanied by the Declaration of Michelle Serrato. Debtors are the owners of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California ("Property"). Debtors seek to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v.*

Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Opposition

Creditor asserts that the value of the Property was $345,000.00 to $355,000.00 on the petition filing date. Creditor's valuation is based on the opinion of Linda Bennett, a licensed California real estate salesperson, and comparable sales of six homes within one-half miles of the Property.

12. 17-26013-B-13 DIANA EVANS
MJ-1 Jonathan D. Matthews

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-10-17 [53]

U.S. BANK, N.A. VS.

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

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

U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Seris 2006-4N, its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 433 Thistle Circle, Martinez, California (the "Property"). Movant has provided the Declaration of Mary Gracia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gracia Declaration states that the Debtor is not the original borrower under the note or deed of trust. The original borrower under the promissory note secured by a mortgage of deed of trust is Karen Nierhake ("Original Borrower"). Debtor's interest in the property originates from an amendment to the Thistle Trust on or around February 5, 2015, which gave Debtor a 10% interest in the Trust to which the Property was transferred.

The Declaration states that the Debtor has failed to make one post-petition payment due October 1, 2017, and that 99 payments have come due but none have been made (August 1, 2009, through October 1, 2017). The delinquency as of November 10, 2017, totals $602,761.99.

Movant requests relief from the automatic stay on grounds that there is cause for failure to make payments pursuant to 11 U.S.C. § 362(d)(1) and because the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud Movant pursuant to 11 U.S.C. § 362(d)(4).

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 (9th Cir. BAP 1986); *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985). The court determines that cause exists for terminating the automatic stay, including default in the one post-petition payment that has come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985).

Additionally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property*

without the consent of the secured creditor or court approval; or

"*(B) multiple bankruptcy filings affecting such real property.*"

It appears that the Debtor was part of a greater scheme to thwart Movant from foreclosing on the Property located at 433 Thistle Circle, Martinez, California. Noteworthy is the fact that Debtor is associated with the many individuals who engaged in the intricate scheme to delay, hinder, or defraud creditor Wells Fargo Bank, N.A. from foreclosing on a different property in the Virgil Leroy Evans bankruptcy. *See* case no. 17-23313, dkt. 53.

Here, eight individuals have obtained an interest in the Property at varying times without Movant's knowledge or consent. These individuals are Karen Nierhake, Carl Gonsalves, Terese M. Robinson, Diana Evans, Paul Reeder, Deon Booker, Virgil Leroy Evans, Wesley Earl Stetenfeld. All but one have filed for bankruptcy, with many filing multiple bankruptcies and none receiving a discharge. Indeed, the majority were dismissed for failure to file information, failure to appear, and failure to make plan payments, and two were dismissed for abuse. *See* Terese M. Robinson, Northern District of California (Santa Rosa), case no. 14-11610; Paul Lawrence Reeder, Southern District of California (San Diego), case no. 17-00136.

From 25 separate bankruptcy proceedings that have spanned eight years and three districts in California, the court finds that the filing of these bankruptcies prevented Movant from foreclosing on its Property. The Property has passed through multiple parties, including the Debtor, and these parties filed for bankruptcy and all of their cases were dismissed. Since the Debtor was part of a greater scheme to delay, hinder, or defraud the Movant, the court is not persuaded that the Debtor has filed this bankruptcy petition in good faith.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

The order shall be binding and effective under 11 U.S.C. § 362(d)(4)(A) and (B) in any other bankruptcy case purporting to affect the Property filed not later than two (2) years after the date of entry of this Order, except that a debtor in a subsequent bankruptcy case may move for relief from this Order based upon changed circumstances or for good cause shown, after notice and a hearing.

The codebtor stay of 11 U.S.C. § 1301(a) is terminated, modified or annulled as to the codebtor, on the same terms and conditions as to the Debtor.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

13. 17-27013-B-13 CJO-1 **Thru #14**

MICHAEL HALLETT
Scott D. Hughes

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-7-17 [19]

Tentative Ruling: Bank of America, N.A. as Servicer for the Bank of New York Mellon fka The Bank of New York as Successor Indenture Trustee to JPMorgan Chase Bank, N.A., as Indenture Trustee for the CWABS Revolving Home Equity Loan Trust, Series 2004-K's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $2,529.96 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

14. 17-27013-B-13 JPJ-1

MICHAEL HALLETT
Scott D. Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-6-17 [16]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

15. 17-24614-B-13 PLC-1 Thru #17

ALFONSO/CAMMIE MACIEL
Peter L. Cianchetta

MOTION TO CONFIRM PLAN
11-22-17 [30]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,402.00, 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).

Second, the plan payment in the amount of $1,399.00 does not equal the aggregate of the Trustee's fees, monthly payment for administrative expenses, and monthly dividends payable on account of Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,729.67. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes improper expenses at Lines #13e and Line #17. When the overstated expenses at these lines are added, Line #45 changes from $4.27 to $1,085.99. This means that Debtors must pay no less than $65,159.40 to unsecured, non-priority creditors. Based on the filed claims, the total of unsecured, non-priority creditors is $9,025.77. Debtors must pay a 100% dividend to their unsecured, non-priority creditors. The amended plan currently proposes to pay a 0% dividend to unsecured, non-priority creditors.

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

The court will enter an appropriate minute order.

16. 17-24614-B-13 PLC-2

ALFONSO/CAMMIE MACIEL
Peter L. Cianchetta

MOTION TO VALUE COLLATERAL OF A-L FINANCIAL CORP.
11-30-17 [35]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

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

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

Debtor's motion to value the secured claim of A-L Financial Corp. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Ford Taurus SE ("Vehicle"). The Debtors seek to value the Vehicle at a fair market value (and not a replacement value) of $11,191.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by A-L Financial Corp. is the claim which may be the subject of the present motion.

Discussion

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value.

The Debtors state that Creditor holds a purchase money security interest in the Vehicle and that it was created by an original contract of sale negotiated and signed on or about September 28, 2016. Claim No. 3-1 includes a sales contract which supports this date. This being the case, the purchase money debt was acquired less than 910 days before the petition was filed in this case. Accordingly, the Debtors may not lien strip the Vehicle to its replacement value. The Debtors' motion is denied with prejudice.

The court will enter an appropriate minute order.

17. 17-24614-B-13 PLC-3 — ALFONSO/CAMMIE MACIEL, Peter L. Cianchetta — MOTION TO VALUE COLLATERAL OF WHEEL FINANCIAL GROUP, LLC 12-1-17 [40]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

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

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

Debtor's motion to value the secured claim of Wheel Financial, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2004 Chevrolet Silverado 1500 ("Vehicle"). The Debtors seek to value the Vehicle at a fair market value (and not a replacement value) of $5,603.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7-1 filed by Wheels Financial Group, LLC is the claim which may be the subject of the present motion.

Discussion

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value.

The Debtors state that Creditor holds a purchase money security interest in the Vehicle and that it was created by an original contract of sale negotiated and signed on or about June 11, 2016. However, Claim No. 7-1 includes a sales contract which states that the loan was incurred on June 11, 2014. Relying on the sales contract and assuming that the Debtors' date was a typographical error, the purchase money debt was acquired more than 910 days before filing of the petition and therefore the Creditor's claim may be lien stripped.

However, the court finds issue with the Debtors' fair market valuation. In the Chapter 13 context, the correct valuation is the replacement value of personal property used by debtors for personal, household or family purposes and is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). It is not the fair market value.

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

The court will enter an appropriate minute order.

18. 17-27414-B-13 PATRICIA GONSALVES
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [20]

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

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

First, the Debtor has not submitted proof of her social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties as required under 11 U.S.C. § 521(a)(3).

Second, the claim of Citimortgage is misclassified as a Class 1 claim. According to Claim No. 1 filed by the creditor, the claim will mature during the life of the plan and, therefore, should be classified as Class 2.

The plan filed November 8, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

19. 17-27015-B-13 GERARDO LOPEZ
JPJ-1 Peter G. Macaluso
Thru #22

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-6-17 [21]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

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

The court's decision is to continue the matter to February 6, 2018, to be heard in conjunction with the motion to value collateral of Transport Funding, LLC.

The court will enter an appropriate minute order.

20. 17-27015-B-13 GERARDO LOPEZ
JWC-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY TRANSPORT FUNDING, LLC
12-7-17 [24]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

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

The court's decision is to continue the matter to February 6, 2018, to be heard in conjunction with the motion to value collateral of Transport Funding, LLC.

The court will enter an appropriate minute order.

21. 17-27015-B-13 GERARDO LOPEZ
JWC-2 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-17 [31]

TRANSPORT FUNDING, LLC VS.

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

The court's decision is to grant in part and deny in part the motion for relief from stay.

Transport Funding, LLC ("Movant") seeks relief from the automatic stay with respect to four (4) assets: 2008 Volvo Tractor, 2011 Kenworth Tractor, 2012 Peterbilt Tractor, and 2010 Peterbilt Tractor. The moving party has provided the Declaration of Alicia Sobczyk to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

As to the 2008 Volvo Tractor, the Sobczyk Declaration states that the lease agreement has already been paid in full but that the vehicle nonetheless serves as additional collateral for the Debtor's other obligations to Movant pursuant to a Cross Collateral Agreement signed by the Debtor. At the meeting of creditors, Debtor testified that he was never in possession of this vehicle and that he was a straw purchaser for his cousin Manuel Nuno. It is this reason that the Debtor did not list this vehicle as an asset in his schedules.

As to the 2011 Kenworth Tractor, the Sobczyk Declaration states that the balance owed is approximately $29,904.00 and that the Debtor is attempting to lien strip the vehicle to $18,000.00. Movant objects to this valuation and states that the Debtor has not made this vehicle available to Movant for inspection.

As to the 2012 Peterbilt Tractor, the Sobczyk Declaration states that the balance owed is approximately $55,080.00 and that the Debtor intends to surrender this vehicle. However, Movant states that it does not know where to locate this vehicle since the vehicle was towed two months ago in Las Vegas and the Debtor could not provide an address.

As to the 2010 Peterbilt Tractor, the Sobczyk Declaration states that the balance owed is approximately $30,331.00 and that the Debtor intends to surrender this vehicle. This vehicle is located at a repair shop in Sacramento with a $6,540.00 lien and is in poor condition. Movant asserts the estimated value to be only $1,500.00.

Opposition

Debtor objects to lifting the automatic stay as to the 2008 Volvo Tractor and 2011 Kenworth Tractor. Debtor does not object to lifting the automatic stay as to the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor, which the Debtor intends to surrender.

As to the 2008 Volvo Tractor, Debtor asserts that Movant has failed to support its assertion that the vehicle serves as additional collateral under the Cross Collateral Agreement. Debtor also states in his declaration that the vehicle was paid in full prior to his signing of the lease agreements for the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor, and that therefore the vehicle was not included in either lease agreements. Debtor notes that despite the vehicle being paid in full by his cousin Mr. Nuno, Movant has not provided Mr. Nuno a pink slip.

As to the 2011 Kenworth Tractor, Debtor asserts that the vehicle is being paid as a Class 2 claim and is fully insured. Debtor also contends that it has not denied Movant access to the vehicle but that rather he was unaware of the request to inspect the vehicle since Debtor's attorney does not accept service by email or facsimile.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay as to the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor only since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11

U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, and the Debtor having stated its intent to surrender the two vehicles, the court determines that the two vehicles are not necessary for any effective reorganization in this Chapter 13 case.

The court finds insufficient evidence to support Movant's request to lift the automatic stay as to the 2008 Volvo Tractor and 2011 Kenworth Tractor. Movant acknowledges that there is no debt associated with the 2008 Volvo Tractor but does not provide the date it was paid off or that the vehicle is an applicable collateral under the Cross Collateral Agreement at Exhibit 7, Dkt. 36. Also the Debtor has agreed to make the 2011 Kenworth Tractor available for Movant's inspection for purposes of valuation.

The court shall issue an order terminating and vacating the automatic stay to allow Transport Funding, LLC, its agents, representatives and successors, and all other creditors having lien rights against the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor only, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived as to the 2012 Peterbilt Tractor and 2010 Peterbilt Tractor only.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

22. 17-27015-B-13 GERARDO LOPEZ
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF TRANSPORT FUNDING, LLC
12-1-17 [16] f1

Tentative Ruling: The Motion to Value Collateral of Transport Funding, LLC 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's decision is to continue the matter to February 6, 2018, to allow Transport Funding, LLC to inspect the 2011 Kenworth T660 Tractor.

Debtor's motion to value the secured claim of Transport Funding, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Kenworth T660 Tractor ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $18,000.00 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Opposition

Creditor states that it has not had the opportunity to inspect the 2011 Kenworth T660 Tractor. The Debtor has filed a response stating that it will make the vehicle available to the Creditor.

The Creditor also asserts that the loan is secured by a 2008 Volvo Tractor pursuant to a Cross Collateral Agreement and that the Debtor failed to list this vehicle in his schedules. The Debtor filed a response disputing whether the vehicle is part of the Cross Collateral Agreement, and that he did not include the vehicle in his schedules because he has no interest in the vehicle, which was purchased by, is in possession of, and was paid off by his cousin Mr. Nuno.

23. 17-21520-B-13 MARK ENOS
JPJ-2 Peter L. Cianchetta
Thru #24

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-30-17 [59]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The court having signed an order dismissing case on January 6, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

24. 17-21520-B-13 MARK ENOS
PLC-5 Peter L. Cianchetta

MOTION TO CONFIRM PLAN
11-20-17 [82]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The court having signed an order dismissing case on January 6, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

25. 17-26823-B-13 URMILA CHAND
JPJ-2 Scott D. Hughes

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON 12-6-17 [24]

DEBTOR DISMISSED: 12/20/2017

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The case having been dismissed, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

26. 14-31324-B-13 WILLIAM/ROXANNE ROBERTS MOTION TO MODIFY PLAN
MJD-3 Matthew DeCaminada 12-4-17 [52]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

Debtors' to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 4, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

27. 17-27127-B-13 SHERWIN BRAMLETT
JPJ-1 Peter G. Macaluso
Thru #28

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [24]

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

The court's decision is to continue the matter to January 16, 2018, to be heard in conjunction with the motion to value collateral of John Lynch.

The court will enter an appropriate minute order.

28. 17-27127-B-13 SHERWIN BRAMLETT
KSR-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JOHN LYNCH
12-14-17 [27]

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

The court's decision is to continue the matter to January 16, 2018, to be heard in conjunction with the motion to value collateral of John Lynch.

The court will enter an appropriate minute order.

29. 12-40628-B-13 LIAM MURPHY
AP-1 Scott J. Sagaria

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-20-17 [63]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion for Relief From Automatic Stay and Co Debtor Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5558 14th Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Sherry Gonzalez to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Gonzalez Declaration states that there are 3 post-petition defaults, with a total of $3,016.51 in post-petition payments past due. Additional payments will become due on the first day of each month thereafter.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $165,276.39 as stated in the Gonzalez Declaration. The value of the Property is determined to be $87,267.00 as stated in Schedules A and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

The co-debtor stay of 11 U.S.C. § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

30. 17-27330-B-13 JPJ-1 **Thru #31**

ROBERT/SUSAN OBY
Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [31]

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

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

First, the Debtors have 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. The Debtors acknowledge in their response that they have filed the majority, but not all, of their payment advices. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, the Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. Although Debtors state that they were not required to file tax returns since 2011, proofs of claims filed by the Internal Revenue Service and Franchise Tax Board show that tax returns were not timely filed and that taxes owing for those years are either unassessed or to be determined. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, feasibility depends on the granting of a motion to value collateral for Ocwen. No motion to value has been filed by the Debtors.

Fifth, the Trustee objects to approval of Debtors' attorney's fees in the amount of $5,500.00 in connection with the plan confirmation. Pursuant to Local Bankr. R. 2016-1, the maximum fee that may be charged is $4,000.00 in non-business cases. The Debtors have filed a response stating that the correct amount of attorney's fees to be paid through the plan is $2,500.00.

Sixth, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4) since unsecured creditors may receive a higher distribution in a Chapter 7 proceeding. Debtor listed an anticipated surplus from a foreclosure sale on Line 34 and exempted it in the amount of $1.00 on Schedule C. At the meeting of creditors, Joint Debtor testified that the surplus from the foreclosure is $108,000.00 and that she has a 50% interest in that money. Based on the proof of claims filed by the Internal Revenue Service and Franchise Tax Board, there may be some equity in the Joint Debtor's share and, since it has not been exempt, it would count toward liquidation. The total amount that will be paid to unsecured creditors is $0.00.

The plan filed November 4, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

31. 17-27330-B-13 VVF-1 — ROBERT/SUSAN OBY — Aubrey L. Jacobsen — OBJECTION TO CONFIRMATION OF PLAN BY HONDA LEASE TRUST 11-22-17 [22]

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

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

Creditor Honda Lease Trust objects to confirmation on grounds that the plan incorrectly treats and classifies its secured claim in a leased 2015 Honda Pilot ("Vehicle") as a "purchase finance" secured claim.

Debtors have filed a response stating that they will correct this error in an amended plan that provides for Creditor in Section 4 as a leased vehicle account.

Although requested in the objection, Creditor has not stated either a contractual or statutory basis for the award of attorney's fees in connection with this objection. Creditor is not awarded any attorney's fees.

The plan filed November 4, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

32. 16-24635-B-13 MICHAEL/CLARA LANGTON MOTION TO MODIFY PLAN
MJD-2 Matthew DeCaminada 11-28-17 [79]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

Debtors' to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on November 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

33. 17-28137-B-13 MICHAEL LAMBERT MOTION TO EXTEND AUTOMATIC STAY
TLA-1 Thomas L. Amberg 12-19-17 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on November 30, 2017, due to failure to timely file documents (case no. 17-27540, dkt. 11). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor assert that the previous case was filed in an effort to save his home. In that case, Debtor had filed his petition pro se and was unfamiliar with the bankruptcy process. Debtor contends that his circumstances have changed since he has retained counsel in this bankruptcy case, has filed all required documents, and can support the proposed plan.

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

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

The court will enter an appropriate minute order.

34. 17-21446-B-13 BLG-2 **Thru #35**

SHARISE ALLEN
Chad M. Johnson

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT
12-11-17 [42]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion to Avoid Lien of Judgment Creditor State of California Employment Development Department 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of State of California Employment Development Department ("Creditor") against the Debtor's property commonly known as 1612 McGuire Circle, Suisun City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,105.83. An abstract of judgment was recorded with Solano County on January 7, 2014, which encumbers the Property. All other liens recorded against the Property total $526,613.68.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $447,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.200 in the amount of $100,000.00 on Schedule C.

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

The court will enter an appropriate minute order.

35. 17-21446-B-13 BLG-3

SHARISE ALLEN
Chad M. Johnson

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT
12-11-17 [46]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion to Avoid Lien of Judgment Creditor State of California Employment Development Department 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of State of California Employment Development Department ("Creditor") against the Debtor's property commonly known as 1612 McGuire Circle, Suisun City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,278.91. An abstract of judgment was recorded with Solano County on August 8, 2011, which encumbers the Property. All other liens recorded against the Property total $527,719.51.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $447,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.200 in the amount of $100,000.00 on Schedule C.

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

The court will enter an appropriate minute order.

36. 16-22152-B-13 THOMAS/DENISE RAHMING MOTION TO MODIFY PLAN
NBC-6 Eamonn Foster 11-28-17 [107]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion to Confirm Fifth Modified Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on November 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

37. 13-27755-B-13 JAMES/TAMARA HERZOG — MOTION TO MODIFY PLAN
JTN-3 Jasmin T. Nguyen — 11-18-17 [59]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on November 18, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

38. 17-20556-B-13 JPJ-1 — STEPHANIE GRIESS, Ashley R. Amerio — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 4, 11-9-17 [18]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 4-1 of Cavalry SPV I, LLC and the claim is reduced to $1,843.14, which represents the amount the Chapter 13 Trustee paid on the claim prior to the filing of this objection.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of $15,299.93. Objector asserts that the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about December 7, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 27, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Because the Trustee has already paid on the claim prior to the filing of this objection, the claim will be reduced to $1,843.14, which represents the amount paid.

The court will enter an appropriate minute order.

39. 17-26764-B-13 CAROLYN JANE HEUSTESS
JPJ-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-6-17 [25]

CASE DISMISSED: 12/20/2017

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The case having been dismissed, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

40. 16-24570-B-13 DOUGLAS/JULIE BOSTIAN MOTION TO SELL
RAC-1 Richard. A. Chan 12-5-17 [29]

Tentative Ruling: The Motion to Short Sell Real Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 1272 Tamarisk Drive, Lincoln, CA 95648 ("Property").

Proposed purchaser Jedrek Upton has agreed to purchase the Property for $375,000.00. Debtors assert that the sale price represents a fair market value for the Property, the sale price is all cash, and the sale is an arm's length transaction. Upon completion of the short sale, all lien holders and other creditors with an interest encumbering the Debtors' residence shall be paid in full in accordance to the agreed upon terms of said short sale, as well as all costs of sale, such as escrow fees, title insurance and broker's commissions. Since the transaction will be a short sale, there will be no proceeds available to the bankruptcy estate.

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

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

The court will enter an appropriate minute order.

41. 17-27971-B-13 MO TEYMOURI
GW-1 Gerald L. White

MOTION TO AVOID LIEN OF MAHSA TEYMOURI
12-8-17 [7]

Final Ruling: No appearance at the January 9, 2018, hearing is required.

Debtor's Motion to Avoid Judicial Lien of Mahsa Teymouri 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of Mahsa Teymouri ("Creditor") against the Debtor's property commonly known as 2028 Letterkenny Lane, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,821.000. An abstract of judgment was recorded with Placer County on November 22, 2017, which encumbers the Property. All other liens recorded against the Property total $429,894.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $480,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.730(a)(2) in the amount of $100,000.00 on Schedule C.

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

The court will enter an appropriate minute order.

42. 17-27373-B-13 TAMURI RICHARDSON
BPC-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-26-17 [37]

SOLANO FIRST FEDERAL CREDIT UNION VS.

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

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

Solano First Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 BMW 7 Series 750i, VIN ending in 6763 (the "Vehicle"). The moving party has provided the Declaration of Paola Kilkenny to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The motion provides that Debtor has $0.00 in post-petition payments past due. The motion also provides that there are 4 pre-petition payments in default, with a pre-petition arrearage of $2,426.34.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $34,550.81, as stated in the Kilkenny Declaration, while the value of the Vehicle is determined to be $22,192.00, as stated in Schedules B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause does not exist for terminating the automatic stay since Movant has not shown that the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Indeed, Movant even states that the Debtor is past due on zero (0) post-petition payments.

The court shall not issue an order terminating and vacating the automatic stay. The motion is denied without prejudice.

The court will enter an appropriate minute order.

43. 17-24480-B-13 RENEE MARTIN ORDER TO SHOW CAUSE
JPJ-1 Albert L. Boasberg 12-12-17 [77]

Tentative Ruling: The court issues no tentative ruling.

The court ordered counsel Albert L. Boasberg to show cause, filed by January 2, 2018, why neither the certification of payment nor § 329(a) statement have been filed. The court's docket reflects that nothing has been filed as of January 8, 2018.

The matter will be determined at the scheduled hearing.

44. 17-22885-B-13 JANINE KING MOTION TO CONFIRM PLAN
MJD-5 Matthew DeCaminada 11-20-17 [79]

Tentative Ruling: Debtor's Motion to Confirm Third Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee objects to confirmation of the plan due to a typographical error in Sections 6.02 and 6.03 that reference a Second Amended Chapter 13 Plan. The Trustee seeks clarification that the Debtor is actually referring to a Third Amended Plan.

The Debtor filed a response stating that those references were in error and should state Third Amended Chapter 13 Plan.

With this clarification, the third amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

45. 17-27387-B-13 PATRICK FRAZIER
JPJ-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-13-17 [17]

CASE DISMISSED: 12/28/17

Final Ruling: No appearance at the January 9, 2018, hearing is required.

The case having been dismissed, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

46. 17-25488-B-13 RUDY NELSON DELA VEGA
JPJ-1 Candace Y. Brooks

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-12-17 [15]

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

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

The Debtor and Trustee have conferred and agreed to the following changes: (1) Debtor will concede the "optional telephone services" amount on Form 122C-2, Line 23, and several of the marital adjustments from Form 122C-1, Line 13; (2) Trustee will concede the marital adjustments related to the non-filing spouse's 401k voluntary retirement contributions and pre-martial student loans. With these corrections, the Debtor's Monthly Disposable Income on Line 45 should be $752.20 and the Debtor must pay no less than $45,132.00 to general unsecured creditors. The Debtor will file an amended plan to incorporate these agreed upon changes.

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

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

The court will enter an appropriate minute order.

47. 17-24198-B-13 NAITA SAEFONG MOTION TO CONFIRM PLAN
FF-2 Paramprit Bindra 11-13-17 [36]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated November 9, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The plan payment in the amount of $495.00 for month 7 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $931.38. The problem with month 7 is due only to the Debtor's language in the additional provisions stating which months certain dividends are to be made in accordance with the plan. There is an overlap in month 7 of all the dividends that is causing the aggregate problem. The plan does not comply with Section 4.02 of the mandatory form plan.

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

The court will enter an appropriate minute order.