**UNITED STATES BANKRUPTCY COURT**
**Eastern District of California**

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

## PRE-HEARING DISPOSITIONS

**DAY: TUESDAY**
**DATE: January 22, 2019**
**CALENDAR: 1:00 P.M. CHAPTER 13**

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

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

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

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

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

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

**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

**January 22, 2019 at 1:00 p.m.**

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| | | | |
|---|---|---|---|
| 1. | 18-26405-B-13<br>DEF-2 | PHILLIP LLEWELLYN<br>David Foyil | MOTION TO CONFIRM PLAN<br>11-7-18 [25] |

**No Ruling**

2. 17-21307-B-13 JPJ-2 — JOHN LOCKSTROM, Mikalah R. Liviakis — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE, 12-18-18 [27]

DEBTOR DISMISSED: 01/09/2019

**Final Ruling**

The court's decision is to deny as moot the motion to convert and deny as moot the motion to dismiss, as the case was dismissed on January 9, 2019, on debtor John Lockstrom's request. Dkt. 34.

**THE COURT WILL PREPARE A MINUTE ORDER.**

3. 18-25410-B-13 NEAL/LOURDES BASSETT — MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
FF-1 Gary Ray Fraley — 12-18-18 [38]
**Thru #4**

**Final Ruling**

Continued to January 29, 2019, at 1:00 p.m. to be heard with other cases on this issue: Damon, No. 18-27143 DCN PGM-1 and Solberg, No. 18-27062 DCN MG-1.

**THE COURT WILL PREPARE A MINUTE ORDER.**

4. 18-25410-B-13 NEAL/LOURDES BASSETT — MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley — 12-18-18 [33]

**Final Ruling**

Continued to February 29, 2018, at 1:00 p.m. to be heard with Calendar Item #3.

The motion will be denied and the plan not confirmed if debtors Neal and Lourdes Bassett ("Debtors") are not current at the time of the continued hearing.

Debtors also only served 1 address for the Internal Revenue Service ("IRS"), not all 3 addresses required by Local Bankruptcy Rule 2002-1(c). Dkt. 37, p. 3. Debtors shall complete service on the IRS no later than January 22, 2019, at 5:00 p.m. and thereafter file proof that service is completed.

**THE COURT WILL PREPARE A MINUTE ORDER.**

5. 17-24512-B-13 LINDA CONKLING MOTION TO INCUR DEBT
EWG-2 Elliot Gale 12-14-18 [67]

**Final Ruling**

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

Debtor Linda Conkling ("Debtor") seeks permission to enter into a loan modification with Seterus, Inc., loan servicer for Federal National Mortgage Association ("Creditor") to modify the terms of the existing secured loan against real property commonly known as 2481 American River Dr., Sacramento, California 95825-7072 ("Property").

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court's review of the terms of the loan modification, as compared to the previous terms, are as follows:

| Term(s) | Prior Mortgage (POC 5) | Loan Modification (Dkt. 70 Exh. A) |
|---|---|---|
| Principal | $230,797.66, with $21,636.85 in pre-petition arrearage. | $234,362.36 |
| Interest Rate | 4.5% fixed per annum | 4.375% per annum, starting November 1, 2018, with collection deferred on $55,000.00 of the New Principal Balance (above) and Debtor will not pay interest or make monthly payments on that amount. |
| Monthly Payments and Escrow Payments | $797.45 and 152.67 | $791.99 and $854.53 |
| Maturity | June 1, 2034 | November 1, 2058 |
| Liens/Priority | First priority mortgage | Retains first priority |

| | | |
|---|---|---|
| Borrowing Conditions | N/A | Creditor may apply partial prepayments to any non-interest bearing Deferred Principal Balance before applying to other amounts due. |

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

6. 17-20513-B-13 BEVERLY HUNTER
MJ-1 Dale A. Orthner

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-29-18 [31]

CHAMPION MORTGAGE COMPANY
VS.

**Tentative Ruling**

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

The court's decision is to deny the motion without prejudice if debtor Beverly Hunger ("Debtor") has evidence of payment (or has payment) at the time of the hearing. Otherwise, the court will grant the motion for relief from stay but deny relief from the codebtor stay for the reasons explained below.

Based on the Debtor's representation below, the court will also issue a separate order for attorney Dale Orthner to show cause why he should not be sanctioned and/or his fees reduced or disgorged under §§ 329(b) and 330 for noncompliance with Local Bankruptcy Rule 2017-1(a)(1) with regard to this motion.

**Motion for Relief from Stay**

Champion Mortgage Company (dba Nationstar Mortgage LLC), its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay and the codebtor stay with respect to real property commonly known as 8830 Elm Avenue, Orangevale, California 95662 ("Property"). Movant has provided the Declaration of Donna Hamilton to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Hamilton Declaration states that the Debtor defaulted on her post-petition obligations to pay the 2017 Sacramento County taxes, due August 29, 2018, for a total of $943.78. Dkt. 34, ¶ 12.

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 $315,854.61 as stated in Proof of Claim 5, filed by Creditor. The value of the Property is determined to be $300,000.00 as stated in Schedule A filed by Debtor. Dkt. 1, p. 11.

**Debtor's Opposition**

Debtor filed an untimely memorandum of points and authorities in opposition on January 15, 2019. Dkt. 37. Debtor states that she filed the opposition "as [her] attorney Dale Orthner has failed, refused, and otherwise neglected to oppose this motion for [her]." Dkt. 37, ¶ 3. This constitutes good cause to consider opposition to the motion, as required by Local Bankruptcy Rule 9014-1(f)(1)(B). Debtor only argues that she would like to retain the house based on its sentimental value.

**Plan Confirmation**

The court notes that a plan was confirmed on March 24, 2017. Dkt. 14. The plan provides for payments on Creditor's claim in Class 1. Dkt. 5, p. 2.

**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).

For Movant's request for relief from the codebtor stay, 11 U.S.C. § 1301(c) provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that--
>
> (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
> (2) the plan filed by the debtor proposes not to pay such claim; or
> (3) such creditor's interest would be irreparably harmed by continuation of such stay.

Because no co-debtor was listed in the petition or schedules filed by Debtor, this request does not appear proper and is denied. Dkt. 1, pp. 26 (no codebtors on Schedule H), 32 (Debtor is not married).

If the Debtor provides evidence at the time of the hearing that the post-petition taxes have been paid (or if the Debtor has the payment at the hearing), the court shall issue an order denying the motion without prejudice. Otherwise, if the Debtor does not produce evidence that the post-petition taxes have been paid by (or have payment at the time of) the hearing 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 court will also issue a separate order for attorney Dale Orthner to show cause why he should not be sanctioned and/or his fees reduced or disgorged under §§ 329(b) and 330 for noncompliance with Local Bankruptcy Rule 2017-1(a)(1) with regard to this motion.

No other or additional relief is granted by the court.

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

7. 18-25618-B-13 BENJAMEN VERMA
CAS-1 Peter G. Macaluso
**Thru #8**

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
1-3-19 [55]

**Final Ruling**

Withdrawn by moving party on January 18, 2019. Dkt. 86. Creditor Capital One Auto Finance ("Creditor") requests interest of 6.5% under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Debtor Benjamen Vera ("Debtor") filed a reply for confirmation stating he would increase the interest rate on Creditor's secured claim to 6.5%, and the dividend from $570.00 to $601.00. Dkt. 79. The parties' agreement shall be incorporated into and made a part of any plan submitted for confirmation.

**THE COURT WILL PREPARE A MINUTE ORDER.**

8. 18-25618-B-13 BENJAMEN VERMA
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-16-18 [43]

**No Ruling**

9. 19-20022-B-13 PGM-1 RAYMOND/CHRISTINE BELCHER
Peter G. Macaluso
MOTION TO EXTEND AUTOMATIC STAY
1-8-19 [9]

**Tentative Ruling**

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

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

Debtors Raymond and Christine Belcher ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on October 31, 2018, due to delinquent plan payments (case no. 17-24235, dkt. 70). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

**Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). Further, a later-filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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, 209-10 (2008).

Debtors Raymond and Christine Belcher ("Debtors") assert that "the business cash-flow increase for next [sic] 3 years to $300,000.00 averagin [sic] over a [sic] $100,000.00 a year and we have two more clients that are interested in ARE storm water filtration systems. And we got the loan mod we were working for." Dkt. 12, ¶ 3.

Debtors have not 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. Specifically, the terms of the loan modification were not presented for the court to evaluate its impact on the instant case and assess whether Debtors will be more likely, and more able, to successfully prosecute a Chapter 13 plan. Further, Debtors project that their monthly gross business income will increase $1,188.00 compared to their last case without providing a basis for this 14.85% increase. *Compare* dkt. 1, p. 35 ($8,000.00),[1] *and* case no. 17-24235, dkt. 26, p. 2 ($6,812.00 from August 2017).

[1]The court notes that Debtors declare, under penalty of perjury, that their business income will increase even further to $100,000.00 per year, or a further increase of $333.33 per month. *Compare* dkt. 1, p. 25, *and* dkt. 12, ¶ 3. This means Debtors are asserting an increase in gross monthly business income of $1,521.33, or 18.26%, without explanation.

On these grounds, the motion is denied without prejudice.

**THE COURT WILL PREPARE A MINUTE ORDER.**

10. 18-21424-B-13 BRIAN/STEPHANIE PACE — MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab — 12-17-18 [35]

**No Ruling**

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|---|---|---|---|
| 11. | 13-27727-B-13<br>MET-2 | STARR ILOFF<br>Mary Ellen Terranella | CONTINUED MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1<br>11-24-18 [55] |

**Final Ruling**

Continued to February 12, 2019, at 1:00 p.m. No further filings are permitted.

**THE COURT WILL PREPARE A MINUTE ORDER.**

12. 18-27727-B-13 JOHN MEHL
AP-1 Scott D. Shumaker

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-18 [17]

WELLS FARGO BANK, N.A. VS.

**Tentative Ruling**

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

The court's decision is to grant the motion and terminate the automatic stay of § 362(a) for cause under § 362(d)(1) as it applies to the real property located at 3104 Crest Haven Dr., Sacramento, California, 95821-6131.

**Motion for Relief from Stay**

Creditor Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3104 Haven Dr., Sacramento, California 95821-6131 ("Property"). Movant has provided the Declaration of Rodney Coaxum-Richardson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Coaxum-Richardson Declaration states that there are 0 post-petition defaults, but there are 96 pre-petition payments in default from an extensive loan modification and appeal history, with a total of $167,331.32 in pre-petition payments past due; Movant argues this 8-year history shows a scheme to delay and defraud Movant as an abuse of California Code of Civil Procedure § 2923.6(c) and the Bankruptcy Code. Dkt. 20 ¶¶ 5–30 (summarizing history of loan modification requests and appeals, and seven postponements of Trustee's Sale); dkt. 17, p. 7.

**Debtor's Opposition**

Debtor John Mehl ("Debtor") filed an opposition on January 8, 2019. Dkt. 40.

Debtor asserts that Movant has resisted Debtor's attempts to communicate with him regarding a loan modification, and that Movant's unclean hands justify denying the relief requested.

Debtor points to a civil lawsuit he filed in Sacramento Superior Court, case no. 34-2017-00211100, where he was granted a Restraining Order to stop an upcoming Trustee Sale based on alleged violations of the California Homeowners Bill of Rights. Since the matter was removed to federal court, Debtor claims that he has been referred between Movant's staff and the civil litigation attorney, and summarizes his efforts prior to filing for bankruptcy. Dkt. 41, pp. 2–5.

Debtor also argues that the motion is premature, as the confirmation hearing is set for February 12, 2019, and waiting for the confirmation hearing will not prejudice Movant based on the adequate protection payments and cure of arrears provided in the plan until that date. Dkt. 32.

**Movant's Reply**

Movant filed a reply on January 15, 2019. Dkt. 50.

Movant cites to specific instances as examples of its efforts to communicate to Debtor through civil counsel, Mr. Scott Teigle. In addition, Movant points to Debtor's $3,000,000.00 in bonds, mutual funds, and/or publically traded stocks as evidence of a bad faith filing in light of these assets not being disclosed in the prior bankruptcy cases and due to the delay in paying creditors.

Movant also disputes Debtor's argument that waiting until the confirmation hearing will not prejudice creditors, as the plan relies on speculative commissions to fund the plan and Movant is required to wait for full payment until August 2019.

Also, Movant points to the 14 loan modification applications that were submitted, and that 3 of those applications were considered in 2018, and asserts that this is sufficient under the Homeowners Bill of Rights.

**Discussion**

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $678,128.58 (including $277,625.58 secured by Movant's first deed of trust) as stated in the Relief from Stay Summary Sheet filed by Movant and Schedule D filed by the Debtor. Dkt. 37, p. 12; dkt. 19, p. 1. The court notes that Debtor valued the Property at $0.00, despite listing a fee simple interest. Dkt. 37, p. 3. Also, while the deadline to file is not until February 21, 2019, a review of the claims registry shows that Creditor has not yet filed a proof of claim. Dkt. 47.

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. 11 U.S.C. § 362(d)(1); *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 initially notes that the parties should not litigate the prior loan modification attempts and violations of the Homeowners Bill of Rights on a stay relief motion. *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985). Hearings on relief from the automatic stay are handled in a summary fashion, which means the validity of a claim or contract underlying the request for relief is not litigated during the hearing. *Id.*

That said, the court may sua sponte take appropriate action to address a debtor's bad faith and abusive conduct. *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008). And in that regard, the totality of the circumstances surrounding the filing of a bankruptcy petition are relevant. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223-24 (9th Cir. 1999). The totality of the circumstances includes facts leading up to the filing of a petition. *See Matter of Little Creek Develop. Co.*, 779 F. 2d 1068, 1072 (5th Cir. 1986).

Movant also requested relief under 11 U.S.C. § 362(d)(4), which provides:

> 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.

Movant provided no evidence of the Property being transferred, but the court's review of the prior bankruptcies filed by Debtor revealed the following:

| Bankruptcy Case Number and Chapter | Document/Event | Comments | Docket Citation |
|---|---|---|---|
| 18-27727, Chapter 13 | | | |

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|---|---|---|---|
| | Petition | Filed December 13, 2018 | 1 |
| | Schedule A/B | Debtor listed $0.00 in real estate, including a fee simple interest in the Property, and $3,033,012.00 in personal property, mostly consisting of bonds, mutual funds, or publicly traded stocks | 37, pp. 1, 3-8 |
| 18-26553, Chapter 13 | | | |
| | Petition | Filed October 17, 2018. No schedules attached | 1 |
| | Dismissal | Entered November 15, 2018, due to failure to timely file documents | 29 |
| | Motion for Relief | Denied as moot, but the court noted that, responding to Movant's argument under § 362(d)(4) the prior bankruptcy filings "spaced out over eight years may be more akin to an uninformed or futile tactic rather than a 'scheme.'" | 31, pp. 4-5 |
| 17-20699, Chapter 13 | | | |
| | Petition | Filed February 2, 2017 | 1 |
| | Schedule A/B | Listing $0.00 of real estate, including a "fee simpler [sic]" interest in the Property, and $23,905.00 of personal property | 20 |
| | Dismissal | Granted the Chapter 13 Trustee's motion to dismiss on April 27, 2017, for failure to file a credit counseling certificate and for delinquent plan payments | 40, 43 |
| 13-35728, Chapter 13 | | | |
| | Petition | Filed December 16, 2013, no schedules attached | 1 |
| | Dismissal | Case dismissed December 27, 2013, for failure to timely file documents | 11 |
| 10-53158, Chapter 7 | | | |
| | Petition | Filed December 20, 2010 | 1 |
| | Schedule A/B | Listed $165,000.00 of real property, consisting of the Property, and $236,888.86 of personal property | 1, p. 19 |

| | | | |
|---|---|---|---|
| | Discharge and Case Closed | Discharge entered April 4, 2011, and case closed April 8, 2011 | 23, 25 |
| | Motion to reopen | Debtor requested the case be reopened to disclose an interest in a potential lawsuit | 27 |
| | Amended Schedule A/B | Filed May 15, 2018, adding a $10,000.00 lawsuit against Wells Fargo for violation of Bill of Rights filed in 2017 | 35, p. 9 |

This history of substantially undervaluing the Property, not only while *pro se* but also with the assistance of counsel, is disturbing. The exclusion of any value for the Property in the Schedules, and the failure to file Schedules disclosing the Property in the first instance, in this case and the Debtor's other bankruptcy cases is even more troubling. And since Schedules are filed under penalty of perjury pursuant to Federal Rule of Bankruptcy Procedure 1008, those exclusions and omissions are indicative of bad faith. Further, the sudden appearance of $3,000,000.00 in assets within a 28-day period between multiple filings, without explanation, undercuts Debtor's arguments of good faith in these cases and, again, is indicative of bad faith. Further, the repeat filing of multiple nonproductive bankruptcy cases (5, including this one, over the last 8 years and 3 within the last 24 months) is further indicia of bad faith and filing bankruptcy cases for the improper purpose of attempting to force the Creditor into entering into a loan modification when the Creditor is under no obligation to do so (or, at least, the Debtor has not demonstrated any such obligation). The point is, the Debtor's bad faith conduct in this and his other bankruptcy cases and his abusive and improper purpose filings have adversely affected Creditor's substantive rights under applicable non-bankruptcy law; the totality of those circumstances is sufficient cause under § 362(d)(1). *Duvar Apt., Inc. v. FDIC (In re Duvar Apt.)*, 205 B.R. 196, 200-01 (B.A.P. 9th Cir. 1996).[1]

As to Creditor's argument under § 362(d)(4), the court concurs with the ruling in the prior bankruptcy filing that, although indicative of bad faith, the Debtor's bankruptcy cases filed and "spaced out over eight years may be more akin to an uninformed or futile tactic rather than a fraudulent 'scheme.'" Case No. 18-26553, Dkt. 31, pp. 4-5.

For the foregoing reasons, the motion will be granted and the stay terminated to permit Creditor to exercise its rights to the Property under applicable nonbankruptcy law.

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

No further relief is ordered.

**THE COURT WILL PREPARE A MINUTE ORDER.**

[1]The court also notes that the Debtor may not even have the ability to reorganize. Based on an initial cursory review, to the extent the Debtor proposes a plan that provides for adequate protection payments on a mortgage secured by a lien on his residence, the plan violates 11 U.S.C. § 1322(b)(2) and is dead on arrival.

| | | | |
|---|---|---|---|
| 13. | 18-27932-B-13<br>MS-1 | ALEXANDR/VALENTINA ZAKHARNEV<br>Mark Shmorgon | MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC<br>12-21-18 [8] |

**Final Ruling**

The court's decision is to deny the motion as moot, as a notice of conversion was filed January 10, 2019. Dt. 23.

**THE COURT WILL PREPARE A MINUTE ORDER.**

14. 17-23945-B-13 DEMAR RICHARDSON MOTION TO MODIFY PLAN
PSB-2 Pauldeep Bains 11-7-18 [45]

**Final Ruling**

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

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

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

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

15. 15-22149-B-13 MATTHEW MCKEE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 Peter G. Macaluso — 12-18-18 [58]

WELLS FARGO BANK, N.A. VS.

**Tentative Ruling**

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

The court's decision is to continue this matter to February 26, 2019, at 1:00 p.m. for the reasons stated below.

**Motion for Relief from Stay**

Creditor Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1520 Yellowstone Ct., Rocklin, California 95765 ("Property"). Movant has provided the Declaration of Talneca Wilson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that there are 61 post-petition defaults, with a total of $70,886.69 in post-petition payments past due. Dkt. 60, ¶¶ 7, 8.

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 $471,999.73 (including $219,656.84 secured by Movant's second deed of trust) as stated in the Wilson Declaration and Schedule D filed by debtor Matthew McKee ("Debtor"). The value of the Property is determined to be $245,000.00 as stated in Schedule A filed by Debtor. Dkt. 20, p. 15.

**Debtor's Opposition**

Debtor filed an opposition on January 8, 2019. Dkt. 64.

Debtor requests that the court deny the motion or, in the alternative, continue this matter to allow a renewed motion to value to be filed, set, and served, primarily because Debtor had prevailed on the motion to value against Movant before it was vacated for insufficient service. Dkt. 54.

**Plan Confirmation**

The court notes that a plan was confirmed on June 17, 2015. Dkt. 38. The plan provides for Movant's claim in Class 2 as a claim "reduced to $0.00 based on the value of collateral," with monthly payments of $0.00 owed to Movant. Dkt. 21, p. 3.

**Discussion**

Movant first argues that cause exists to grant relief from stay under 11 U.S.C. § 362(d)(1). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). However, because Creditor did not bring this motion until after the plan was confirmed, the Debtor's obligations are determined under the confirmed plan. 11 U.S.C. § 1327(a). Because the plan provides for $0.00 per month to Movant, Debtor cannot be delinquent on post-petition payments. So at least on this basis, there is no cause.

Movant also argues that there is no equity in the property, which may be grounds for relief from stay under 11 U.S.C. § 362(d)(2). Once a movant 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. However, while Debtor did not submit evidence or legal authority for why the Property is necessary for an effective reorganization, the court notes that the confirmed plan provides for the property revesting in Debtor and contemplates making payments to other creditors with a secured interest in the Property. Dkt. 21, p. 4. What is troubling, however, is that Debtor offers no explanation for why he has yet to file another motion to value, more than three years after the order vacating the prior motion, particularly when the basis for vacating the order was Debtor's insufficient service of the original motion. Dkts. 54, 55. A review of the court's docket shows that, even as of the hearing on this matter, Debtor has not filed the motion to value collateral to remedy this oversight.

Because the matter may be resolved by a promptly filed motion to value the Property, the court will continue this matter to February 26, 2019, at 1:00 p.m. Debtor must file, set, and serve a motion to value by January 29, 2019, or the court will conclude that the Property is not necessary for an effective reorganization and the motion for relief from stay will be granted on the ex parte application of Movant.

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

16. 15-22850-B-13 SS-10 DANIEL/JESSICA PUGLIA Scott D. Shumaker
MOTION TO MODIFY PLAN 12-17-18 [122]

**Final Ruling**

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

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

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

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

17. 18-25750-B-13 CLH-3 — THUY-PHUONG TRAN, Jasmin T. Nguyen — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT 12-15-18 [33]

**Tentative Ruling**

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

The court's decision is to grant the motion and extend the deadline to February 26, 2019.

**Creditors' Motion to Extend Deadline**

Creditors Romeo Asilador and Susan Ancheta ("Creditors") request an extension to file a complaint objecting to discharge of debtor Thuy-Phuong Tran ("Debtor"). The current deadline was December 17, 2018, and Creditors request that it be extended by 70 days to February 25, 2019. Creditors did timely file their request before the deadline passed, as required by Federal Rules of Bankruptcy Procedure 4004(b) and 4007(c).

Creditors assert that cause exists to extend the deadline pursuant to Federal Rules of Bankruptcy Procedure 4004 or 4007 because they obtained an order approving 2004 examinations on November 14, 2018. Creditors are still waiting to receive and review documents to determine if grounds exists to object to assert claims are nondischargeable.

**Debtor's Opposition**

Debtor filed an opposition on January 2, 2019. Dkt. 38.

First, Debtor argues that Creditors have not shown cause to extend the deadline, because Creditors had three months from the mailing of the Notice of Meeting of Creditors to file an adversary.

Second, Debtor asserts that a 2004 examination is not a requisite for filing an adversary, and no explanation was provided for why counsel could not receive and review the documents before the deadline. Further, Debtor believes that Creditors are requesting an extension to conduct an "exploratory expedition" for causes of action.

**Creditors' Reply**

Creditors filed a reply on January 15, 2019. Dkt. 42.

Creditors assert that they are waiting for documents from Debtor regarding employment history and financial information, and note that they filed two requests for 2004 examinations in November. Creditors acknowledge that Debtor may not have actively delayed discovery and reaffirm that they are investigating potential claims before filing an adversary. Also, Creditors assert that Debtor merely alleged prejudice, without demonstrating a basis for that argument.

Creditors notes that Debtor is due to produce documents by January 18, 2019, and Debtor's 2004 examination is set for February 6, 2019.

**Discussion**

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b) and 4007(c). Factors to consider to determine whether "cause" exists include 1) whether granting the delay will

prejudice the debtor, and 2) the length of the delay and its impact on efficient court administration. *In re Sturgis*, 46 B.R. 360 (W.D. Okla. 1985); *see also In re Stonham*, 317 B.R. 544, 548 n.1 (Bankr. D. Colo. 2004) (analyzing *In re Sturgis*, and noting other factors to be considered for cause, including Debtor's refusal to cooperate in bad faith and whether the creditor exercised diligence).

The court finds the Creditors' need to perform further investigation of the Debtor and their records is sufficient cause, particularly in light of the short extension requested which will not impact the efficient administration of this case. Therefore, the motion is granted and the deadline for the Creditors to object to Debtor's discharge is extended to February 26, 2019.

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

18. 14-30052-B-13 ERIKA/EUGENIO VILLICANA — MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR
MOH-1 Michael O'Dowd Hays — 1-8-19 [44]

**Tentative Ruling**

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

The court's decision is to substitute the surviving Debtor to continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

**Debtors' Motion**

Debtors Erika and Eugenio Villicana ("Debtors") filed a petition for Chapter 13 relief on October 8, 2014. Dkt. 1. A plan was confirmed on March 19, 2015. Dkt. 38. On January 8, 2019, debtor Eugenio filed a Notice of Death of Co-Debtor Erika, who passed on November 1, 2018. Dkt. 44. Debtor Eugenio ("Successor") also filed a motion to waive the requirements of 11 U.S.C. § 1328 and for continued administration of the case. Dkt. 44.

**Discussion**

An overview of the relevant authority is warranted in this case.

11 U.S.C. § 1328(g)(1) requires a debtor seeking an order of discharge to file a certificate showing completion of a personal financial management course. However, this does not apply "with respect to a debtor who is a person described in section 109(h)(4)[.]"

11 U.S.C. § 109(h)(4) provides as follows:

> The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and 'disability' means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

Federal Rule of Bankruptcy Procedure 1016 states, in relevant part:

> If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

*See also Hawkins v. Eads*, 135 B.R. 380, fn. 3 (in regards to an adversary proceeding, "[a]lthough Rule 1016 is silent on the point, effective implementation of the rule necessitates a conclusion that all parties in interest have a *duty* to inform the court of the fact of death. It would be appropriate for a party to borrow from Rule 25 and

file a suggestion of death on the record and ask that the court notice a hearing on the question of whether to dismiss or to proceed with the case.").

Local Bankruptcy Rule 1016-1(a) requires counsel for the debtor, or the party to be appointed as the representative or successor of the deceased debtor, to file a Notice of Death within 60 days of the death of the debtor. Subpart (a) references Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025. In reference to whether dismissal is mandatory, the Ninth Circuit has noted:

> Rule 25(a)(1) uses the phrase "must be dismissed," but does not specify whether the dismissal "must" be with prejudice. Defendants insist that "must be dismissed" always means with prejudice, so the district court abused its discretion in permitting Zanowick to dodge the Rule 25 bullet through voluntary dismissal. Unfortunately for defendants, the "history of Rule 25(a) and Rule 6(b) makes it clear that the 90 day time period was not intended to act as a bar to otherwise meritorious actions, and extensions of the period may be liberally granted." *Cont'l Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (citation omitted); *see also United States v. Miller Bros. Constr. Co.*, 505 F.2d 1031, 1035 (10th Cir. 1974) (stating that under Rule 25, a "discretionary extension should be liberally granted absent a showing of bad faith on the part of the movant for substitution or undue prejudice to other parties to the action"); 7C Charles Alan Wright et al., Federal Practice and Procedure § 1955 (3d ed. 2017) ("Dismissal is not mandatory, despite the use of the word 'must' in the amended rule.").

*Zanowick v. Baxter Healthcare Corp.*, 850 F.3d 1090, 1094 (9th Cir. 2017) (internal citations omitted).

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [FED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested. The continued administration of this case is in the best interests of all parties based on the plan having been successfully prosecuted for 51 months and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The court will enter an order providing as follows:

> 1. Co-debtor Eugenio Villicana, as a successor to Erika Villicana,

will represent her interest in this case;
2. The court will continue to administer the case under Chapter 13;
3. The requirements of filing a certificate of post-petition education prior to entry of an order granting discharge for co-debtor Erika is waived; and
4. The requirement that co-debtor Erika file an 11 U.S.C. § 1328 Certificate is waived.

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

| | | | |
|---|---|---|---|
| 19. | 18-22753-B-13<br>SLH-1 | JOANNE LAWSON<br>Seth L. Hanson | MOTION TO MODIFY PLAN<br>12-17-18 [20] |

**No Ruling**

20. 18-26061-B-13 AUREA/CARLOS GOMEZ
RLG-2 Robert L. Goldstein
**Thru #21**

OBJECTION TO CLAIM OF PENNYMAC LOAN SERVICES, LLC, CLAIM NUMBER 2
12-5-18 [34]

**Final Ruling**

Debtors Aurea and Carlos Gomez having filed a notice of withdrawal of their objection on January 18, 2019 (dkt. 48), the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

**THE COURT WILL PREPARE A MINUTE ORDER.**

21. 18-26061-B-13 AUREA/CARLOS GOMEZ
RLG-3 Robert L. Goldstein

MOTION TO CONFIRM PLAN
12-6-18 [39]

**No Ruling**

22. 18-26862-B-13 TRENELL MONTAGUE
SBT-1 Susan B. Terrado

MOTION TO CONFIRM PLAN
12-5-18 [20]

**Thru #23**

WITHDRAWN BY M.P.

**Final Ruling**

Debtor Trenell Montague having filed a notice of withdrawal of the motion (dkt. 32), the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

**THE COURT WILL PREPARE A MINUTE ORDER.**

23. 18-26862-B-13 TRENELL MONTAGUE
SBT-2 Susan B. Terrado

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
12-5-18 [18]

**Final Ruling**

A review of the court's docket does not reflect a certificate of service demonstrating that this motion was served on parties in interest. Thus, this matter is denied without prejudice and is removed from calendar.

**THE COURT WILL PREPARE A MINUTE ORDER.**

24. 18-26967-B-13 BECKY ALMEIDA MOTION TO CONFIRM PLAN
PLC-2 Peter L. Cianchetta 12-4-18 [26]
DEBTOR DISMISSED: 12/04/2018

**Final Ruling**

The court's decision is to deny this matter as moot, as the case was ordered dismissed on December 4, 2018. Dkts. 30, 31.

**THE COURT WILL PREPARE A MINUTE ORDER.**

25. 18-25775-B-13 ELIZABETH ANDRADE — MOTION TO CONFIRM PLAN
CYB-1 Candace Y. Brooks — 12-10-18 [30]

**Final Ruling**

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

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

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

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

26. 18-25377-B-13 ROSA PELAYO — MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso — 12-16-18 [51]

**Final Ruling**

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

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

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

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

27. 18-23983-B-13 SHARON LOCKETT MOTION TO MODIFY PLAN
RJ-3 Richard L. Jare 12-18-18 [49]

**Final Ruling**

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

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

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

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

28. 18-25884-B-13 LEON GRAY
TLA-2 Thomas L. Amberg

MOTION TO CONFIRM PLAN
12-11-18 [32]

**No Ruling**

29. 18-26684-B-13 PEARLIE ABELEDA
RPK-1 Ryan Keenan
MOTION TO CONFIRM PLAN
12-20-18 [18]
**Thru #30**

**No Ruling**

30. 18-26684-B-13 PEARLIE ABELEDA
RPK-1 Ryan Keenan
MOTION TO CONFIRM PLAN
12-22-18 [24]

**No Ruling**

31. 12-31689-B-13 DAWN HASKINS
MWB-5 Mark W. Briden

MOTION TO AVOID LIEN OF CITIBANK, N.A.
12-11-18 [112]

**Final Ruling**

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

The court's decision is to value the secured claim of Citibank N.A. at $0.00.

Debtor Dawn Haskins ("Debtor") filed a motion to value the secured claim of Citibank N.A. ("Creditor"), which is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4515 Chico Street, Shasta Lake, California 96019 ("Property"). Debtor seeks to value the Property at a fair market value of $111,000.00 as of the petition filing date. Dkt. 60. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

**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.

**Discussion**

The first deed of trust secured a claim with a balance of approximately $118,147.00. Dkt. 1, p. 16. Creditor's second deed of trust secures a claim with a balance of $3,281.82.[1] Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

[1]The court's review of the petition and attached schedules shows that Citibank N.A. was listed as an unsecured creditor with a balance of $3,281.82. Dkt. 1, p. 18.

32. 18-25193-B-13 MRG-2 — AARON BOREN AND GENEE FELTS-BOREN — Michael R. Germain — MOTION TO CONFIRM PLAN — 12-7-18 [40]

**Final Ruling**

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

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

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

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

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| 33. | 18-23197-B-13<br>JPJ-1 | SUPHAN RANDAZZIO<br>Mikalah R. Liviakis | MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE<br>12-19-18 [18] |

**Final Ruling**

The court's decision is to deny as moot the motion to convert and the motion to dismiss as moot, as the case was ordered dismissed on January 9, 2019. Dkts. 24, 25.

**THE COURT WILL PREPARE A MINUTE ORDER.**

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| 34. | 18-25197-B-13<br>JPJ-1 | LORI MICKENS<br>Pauldeep Bains | OBJECTION TO CLAIM OF NCB MANAGEMENT SERVICES, CLAIM NUMBER 5-1<br>11-21-18 [30] |

**Final Ruling**

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

The court's decision is to sustain the objection to Claim No. 5 of NCB Management Services and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of NCM Management Services ("Creditor"), Claim No. 5. The claim is asserted to be unsecured in the amount of $8,662.74. Objector asserts that the claim should be disallowed because 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 September 16, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 20, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., California Code of Civil Procedure § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

35. 18-27132-B-13 STUART KOPPLE
Pro Se

CONTINUED MOTION TO VALUE COLLATERAL OF UNITED AUTO CREDIT CORPORATION
11-27-18 [10]

**Final Ruling**

Continued to January 29, 2019, at 1:00 p.m. to be heard with other cases on this issue: Damon, No. 18-27143 DCN PGM-1, Solberg, No. 18-27062 DCN MG-1, and Bassett, No. 18-25410 DCN FF-1.

**THE COURT WILL PREPARE A MINUTE ORDER.**

36. 17-23960-B-13 JPJ-3 SHENNEL BEASLEY
Elliot Gale

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
12-5-18 [81]

**Tentative Ruling**

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

The court's decision is to grant the motion to dismiss and deny as moot the motion to convert.

**Trustee's Motions to Convert or Dismiss**

This motion has been filed by Jan Johnson, the Chapter 13 trustee ("Movant"). Movant asserts that the case should be converted or dismissed because debtor Shennel Beasley ("Debtor") is $7,775.00 delinquent in plan payments, which represents approximately 2.3 plan payments.

After reviewing Debtor's filed Schedules A/B and C, Trustee estimates $69,220.70 in non-exempt equity. Thus, Trustee argues that conversion is in the best interests of creditors and the estate.

**Debtor's Opposition and January 15, 2019 Hearing**

Debtor filed an untimely opposition on January 10, 2019. The court continued this matter from the January 15, 2019 hearing to consider the opposition for the reasons stated on the record in open court.

First, Debtor asserts that the delay in receiving payments was due to 1) her account being frozen after a fraud alert, and 2) her family members becoming sick, and needing medical attention and incurring expenses. Dkt. 88, ¶¶ 8, 9. Debtor also notes that she has paid $50,000.00 into the plan to date, so the prejudice to creditors is minimal.

Second, Debtor promised to be current by the time of the January 15, 2019 hearing. No evidence of payment has been submitted.

Third, to the extent relief would be granted, Debtor requested dismissal over conversion.

**Discussion**

Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Because the Debtor represented that she would be current by January 15, 2019, and was not, the court will grant the relief requested by Trustee for the reasons stated. Based on Debtor's consent to dismissal, the court will grant the motion to dismiss and deny the motion to convert as moot.

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

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| 37. | 18-27165-B-13<br>JPJ-1 | EDWARD HOILMAN AND LISA MCCURRY-HOILMAN<br>Chad M. Johnson | CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE<br>12-27-18 [19] |

**Tentative Ruling**

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an objection to confirmation and motion for conditional dismissal. The Trustee objected to confirmation and moved for conditional dismissal because debtors Edward Hoilman and Lisa McCurry-Hoilman ("Debtors") failed to appear at the December 20, 2018, § 341 meeting of creditors and the Debtors were delinquent $1,937.00, or approximately 1 plan payment. This matter was initially heard on January 15, 2019, and continued to January 22, 2019, to provide the Debtors with an opportunity to appear at the continued § 341 meeting on January 17, 2019.

The docket reflects that the Debtors and (appearance) counsel appeared at the continued § 341 meeting on January 17, 2019, and the § 341 meeting was concluded as to the Debtors. The Debtors also made their first plan payment of $1,937.00 on or about December 28, 2018.

Provided the Debtors are current at the time of the continued hearing on January 22, 2019, the Trustee's objection will be overruled, the conditional motion to dismiss denied, and the plan confirmed.

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