

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

February 13, 2018 at 1:00 p.m.

- 
1. [15-26501](#)-B-13 HILLARY CRINER MOTION TO APPROVE LOAN  
[SDH](#)-3 Scott D. Hughes MODIFICATION  
1-9-18 [[68](#)]

**Final Ruling:** No appearance at the February 13, 2018, hearing is required.

The Motion to Approve Loan Modification 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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. U.S. Bank Trust, National Association, as trustee of Bungalow Series F Trust by and through its attorney-in-fact BSI Financial Services ("Creditor"), whose claim the plan provides for in Class 1 under transferor Seterus, Inc. Subservicer for Federal National Mortgage Association, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$1,854.88 a month to \$1,542.69 a month. *See doc. 6, dkt. 63.* The modification will have a new interest rate of 6.00% for 480 months, the effective date is August 1, 2017, and the new maturity date is August 1, 2057.

The motion is supported by the Declaration of Hillary Criner. The Declaration affirms Debtor's desire to obtain the post-petition financing and states that the Debtor has been making trial loan modification payments through the Chapter 13 Trustee for several months and will make the permanent loan modification payments through the Trustee as well.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

February 13, 2018 at 1:00 p.m.

Page 1 of 25

2. [17-26806](#)-B-13 JEFFREY/DEBORAH ALLEN MOTION TO APPROVE LOAN  
[GEL](#)-1 Gabriel E. Liberman MODIFICATION  
1-11-18 [[18](#)]

**Final Ruling:** No appearance at the February 13, 2018, hearing is required.

The Motion to Approve Loan Modification 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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce the principal and interest portion of the monthly loan payments. The modification will consist of one monthly payment of \$1,940.37, 394 monthly payments of \$1,889.60, an interest rate of 4.250%, and a commitment term of 395 months.

The motion is supported by the Declaration of Jeffrey Allen and Deborah Allen. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

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

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

First, the Debtor did not appear at the meeting of creditors set for January 18, 2018, as required pursuant to 11 U.S.C. § 343.

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

Third, 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).

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

Fifth, the plan payment in the amount of \$1,800.05 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. The aggregate of the monthly amounts plus the Trustee's fee is \$3,007.00. The plan does not comply with Section 5.2 of the mandatory form plan.

Sixth, the plan will take approximately 89 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed December 11, 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 prepare an appropriate minute order.

4. [17-28314](#)-B-13 DEAN/THERESA HESS  
[JPJ](#)-1 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-24-18 [[15](#)]

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

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

The Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (form 122C-2) includes an impermissible expense in the amount of \$1,288.45 under Line #41 for voluntary retirement contributions. Debtors' voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and is income that must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012). Without the expense for voluntary retirement contributions, Debtors' monthly disposable income is \$1,326.51 and the Debtors must pay no less than \$79,590.60 to unsecured creditors. The plan pays only \$3,809.94 to unsecured creditors.

The plan filed December 22, 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.

5. [17-27015](#)-B-13 GERARDO LOPEZ  
[JPJ](#)-1 Peter G. Macaluso  
**Thru #8**

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

**Tentative Ruling:** This matter was continued from January 9, 2018. The Trustee's Objection to Confirmation of Chapter 13 Plan and Conditional Motion to Dismiss 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.

According to Schedule I, the Debtor is an owner/operator doing business as De La Cruz Trucking. The Debtor has not disclosed the dates the business existed on question no. 27 of the Statement of Financial Affairs despite stating in his response that he will do so. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 531(a)(1).

While other issues raised by the Chapter 13 Trustee remain pending, including the motion to value collateral of Transport Funding for a 2011 Kenworth T660 Tractor at Item #8, or have been resolved based on Debtor's response to the objection, the plan cannot be confirmed due to Debtor's failure to amend the Statement of Financial Affairs. The Debtor has also stated that he intends to file an amended plan. See Dkt. 71.

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.

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.

6. [17-27015](#)-B-13 GERARDO LOPEZ  
[JWC](#)-1 Peter G. Macaluso

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

**Tentative Ruling:** This matter was continued from January 9, 2018. The Trustee's Objection to Confirmation of Chapter 13 Plan and Conditional Motion to Dismiss 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 because the motion to value at Item #8 will be denied without prejudice.

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.

7. [17-27015](#)-B-13 GERARDO LOPEZ CONTINUED MOTION FOR RELIEF  
[JWC-2](#) Peter G. Macaluso FROM AUTOMATIC STAY  
12-22-17 [[31](#)]

TRANSPORT FUNDING, LLC VS.

**Tentative Ruling:** This matter was continued from January 9, 2018. Because less than 28 days' notice of the hearing was originally 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. Nonetheless, opposition was filed by the Debtor. Based on representations made at the January 9, 2018, hearing, the court provided Transport Funding, LLC and Debtor additional time to file any supplemental brief and response.

The court's decision is to grant the motion as to the 2008 Volvo and conditionally deny the motion as to the 2011 Kenworth.

Debtor filed a response on January 30, 2018, which states that he intends to file, set, and serve an amended plan which provides for Creditor's claim in Class 3, satisfied by the surrender of the 2008 Volvo Tractor ("2008 Tractor"). Dkt. 71. Based on Debtor's intent to surrender the 2008 Tractor, and the fraudulent activity the court is persuaded the Debtor engaged in with his cousin with regard to the 2008 Tractor, Creditor's motion is **ORDERED GRANTED** as to the 2008 Tractor and upon entry of an appropriate order the automatic stay of 11 U.S.C. § 362(a) will be terminated immediately and without regard to Fed. R. Bankr. P. 4001(a)(3).

Creditor, its agents, representative, successors, and/or assigns, shall be permitted to exercise its rights under applicable nonbankruptcy law with regard to the 2008 Tractor including, but not limited to, repossession and sale. There is no need for Creditor to wait for the Debtor to file a plan that states he will surrender the 2008 Tractor and thereby further delay Creditor from exercising its rights. It will be **FURTHER ORDERED** that within three (3) days of the entry of the order terminating the stay as to the 2008 Tractor, the Debtor shall provide Creditor with the 2008 Tractor, the location of the 2008 Tractor, or the location of his cousin who purportedly is in possession of the 2008 Tractor. And it will be **FURTHER ORDERED** that if the Debtor fails to comply with the foregoing surrender and/or disclosure order, on ten (10) days' notice to the Debtor and his attorney, Creditor may file a motion under Fed. R. Bankr. P. 9020 to hold both in contempt.

As to the 2011 Kenworth Tractor ("2011 Tractor"), by February 20, 2018, the Debtor is **ORDERED** to file and serve Creditor with proof the vehicle is insured. If the 2011 Tractor is not insured or if Debtor fails to file and serve proof of insurance, it is **FURTHER ORDERED** that Creditor may file a declaration of non-compliance and submit an order terminating the automatic stay as to the 2011 Tractor. Creditor's order shall provide for a waiver of the 14-day stay of Fed. R. Bank. P. 4001(a)(3) and no attorney's fees. If the Debtor files and serves proof that the 2011 Tractor is insured and intends to retain the vehicle pending its valuation on a renewed motion to value (its motion for which at Item #8 is denied) and confirmation of an amended plan, it is **FURTHER ORDERED** that Debtor shall commence making adequate protection payments in an amount to be determined at the scheduled hearing.

The automatic stay was terminated as to the 2012 Peterbuilt Tractor and the 2012 Peterbuilt Tractor by an order filed on January 25, 2018. Dkt. 70. No further relief as to those vehicles is ordered.

The court will enter an appropriate minute order.

8. [17-27015](#)-B-13 GERARDO LOPEZ  
[PGM](#)-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE  
COLLATERAL OF TRANSPORT  
FUNDING, LLC  
12-1-17 [[16](#)]

**Tentative Ruling:** This matter was continued from January 9, 2018, to allow Transport Funding, LLC additional time to inspect the 2011 Kenworth T660 Tractor. 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 deny the motion to value without prejudice.

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.

#### **Discussion**

There is no indication on the docket whether Creditor has had the opportunity to inspect the Vehicle. Nevertheless, because the court is persuaded that the Debtor and his cousin defrauded or attempted to defraud Creditor in a scheme to obtain credit under false pretenses with regard to the 2008 Volvo Tractor, see dkts. 66 and 67, the court finds and concludes that the Debtor lacks credibility and rejects the Debtor's opinion of the value of the Vehicle. As a result, the Debtor has failed to meet his burden of proof on the issue of value. The motion is therefore denied without prejudice.

The court will enter an appropriate minute order.

9. [16-20018](#)-B-13 JOJIE GOOSELAU  
[JPJ](#)-4 Peter G. Macaluso

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
1-10-18 [[114](#)]

**Tentative Ruling:** The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not convert this Chapter 13 case to a Chapter 7.

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

Movant seeks dismissal of the case on the basis that Debtor is \$13,225.00 delinquent in plan payments, which represents 4 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$3,305.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **Response by Debtor**

In opposition to the motion, Debtor states that it had filed, set, and served a motion for order approving refinance of loan that was heard and granted on January 23, 2018. Dkt. 126. Debtor asserts that the granting of this motion resolves the Trustee's concerns because the Debtor will use the refinance to pay her Chapter 13 plan at 100% and end the plan in month 24.

#### **Discussion**

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

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

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

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor intends to use the refinance to pay her Chapter 13 plan at 100% and end the plan in month 24. The motion is denied without prejudice and the case is not converted to a



case under Chapter 7.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the requested modification and not confirm the modified plan.

First, Debtor's plan impermissibly changes all of the subsections to the 12/01/17 form plan. For example, Subsection 1.01 was altered to Section 1, and so on. No alterations to the preprinted text are permitted.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,000.00 through January 25, 2018, which represents approximately 1 plan payment. The Debtor has filed a response stating that it is current on plan payments.

Nonetheless, for the first reason stated above, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

11. [17-28225](#)-B-13 TIA MCDANIELS  
[JPJ](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-24-18 [[14](#)]

**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 did not appear at the meeting of creditors set for January 18, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to February 15, 2018, to allow the Debtor another opportunity to appear and be examined.

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

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

The plan filed December 20, 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.

12. [16-24327](#)-B-13 RACHEL WILLIAMS  
[BLG](#)-2 Chad M. Johnson

MOTION TO MODIFY PLAN  
1-8-18 [[41](#)]

**Final Ruling:** No appearance at the February 13, 2018, hearing is required.

The Motion to Confirm First Modified Plan Filed on 1/8/18 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 January 8, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. [17-28150](#)-B-13 ANGELA BRACE  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-24-18 [[12](#)]

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

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

The plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B, C, and D, the total value of non-exempt property in the estate is \$122,901.01. The entire amount of the non-exempt property lies in Debtor's residence. The \$122,901.01 is calculated by taking the \$300,000.00 fair market value listed on Schedule A/B, subtracting the secured lien of \$153,098.99 held by Caliber Home Loans, and subtracting an 8% cost-of-sale (\$24,000.00). The Debtor's plan proposes \$40,000.00 paid to priority unsecured creditors and 0% dividend to general unsecured creditors.

The plan filed December 15, 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. [17-21954](#)-B-13 ROBIN/MARIA RUSHING  
[JPJ](#)-2 Steele Lanphier

OBJECTION TO CLAIM OF DISCOVER  
BANK, CLAIM NUMBER 2  
12-12-17 [[45](#)]

**Tentative Ruling:** The Trustee's Objection to Allowance of Claim of Discover Bank 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 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 overrule the objection to Claim No. 2 of Discover Bank.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Discover Bank ("Creditor"), Claim No. 2. The claim is asserted to be in the amount of \$6,492.85. 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 has filed a response stating that the statute of limitations did not run because Creditor had filed an action in the Superior Court of California, County of Sacramento on September 17, 2009, and obtained a judgment against Debtor on February 23, 2010. Exhibit A, docket 49, has been filed in support of Creditor's response.

#### **Discussion**

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 August 15, 2008. However, Creditor has provided evidence that it filed an action in September 17, 2009, and obtained a judgment against the Debtor on February 23, 2010. This is within the four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337.

Based on the evidence before the court, the Creditor's claim is not disallowed.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the requested modification and not confirm the modified plan.

The plan cannot be fully assessed or effectively administered. The previously confirmed plan and the modified plan provide for treatment of Wells Fargo Bank, N.A. in Class 1. The modified plan fails to specify a cure of the post-petition arrearage including a post-petition arrearage amount, interest rate, and monthly dividend owed to Wells Fargo Bank, N.A. for the month of November 2017. The Trustee is unable to fully comply with § 3.07(b) of the plan.

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

The court will enter an appropriate minute order.

16. [17-21962](#)-B-13 SUANNE GRANDERSON OBJECTION TO CLAIM OF CAVALRY  
[JPJ](#)-2 Gabriel E. Liberman SPV II, LLC, CLAIM NUMBER 10  
12-12-17 [[54](#)]

**Final Ruling:** No appearance at the February 13, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Cavalry SPV II, 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. 10-1 of Cavalry SPV II, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 10-1. The claim is asserted to be in the amount of \$770.52. 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 Objector's exhibits, the last payment was received on or about April 2, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 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).

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

The court will enter an appropriate minute order.



17. [17-28272](#)-B-13 TAMARA COOK  
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-24-18 [[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 overrule the objection and conditionally deny the motion to dismiss provided that the order confirming provide for the increased duration of plan payments to five years or 60 months at \$200.00 per month.

Chapter 13 Trustee objects to confirmation of the plan on grounds that Debtor's proposed duration of payments is only 3 years and the plan does not propose payment in full of the allowed unsecured creditors. The applicable commitment period in 11 U.S.C. § 1325(b)(4) is a temporal requirement that determines the minimum duration that a plan must have to be confirmable under 11 U.S.C. § 1325(b)(1)(B). The applicable commitment period is five years or 60 months.

Debtor filed a response agreeing that the plan should be extended to 60 months. Debtor proposes to pay \$200.00 per month for 60 months and to provide this in the order confirming.

Provided that the proposed monthly plan payments for 60 months resolves the Trustee's objection, the plan filed December 21, 2017, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a).

The court will enter an appropriate minute order.

18. [17-28176](#)-B-13 CHRISTOPHER/PEPPER LEWIS OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON  
1-24-18 [[14](#)]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on January 29, 2018. The confirmation hearing for the amended plan is scheduled for March 13, 2018. The earlier plan filed December 18, 2017, is not confirmed.

The court will enter an appropriate minute order.

19. [17-27891](#)-B-13 JOHN REAL  
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-24-18 [[22](#)]

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

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

First, the Debtor did not appear at the meeting of creditors set for January 18, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to February 15, 2018, to allow the Debtor another opportunity to appear and be examined.

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. Debtor's Schedule I shows that he has been working in construction for 6 months prior to the petition date, and Debtor's Statement of Financial Affairs Lines Nos. 4 and 5 show that he did receive income in 2015 and 2016. The Debtor has not provided the Trustee with a declaration stating that he was not required to file tax returns within the past 4 years. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, it is unclear if 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 has exempted real property in the amount of \$168,145.16 and it is uncertain if the Debtor is eligible to claim more than \$100,000.00 under California Code of Civil Procedure § 704.730. If the Debtor is not allowed to exempt more than \$100,000.00, then he would have \$35,505.16 in non-exempt equity. Debtor's plan proposes to pay only \$4,232.70 to priority unsecured creditors and a 0% dividend to general unsecured creditors.

The plan filed December 27, 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.

20. [17-22293](#)-B-13 SYLVIA KNIGHT OBJECTION TO CLAIM OF CAVALRY  
[JPJ](#)-1 Mohammad M. Mokarram SPV I, LLC, CLAIM NUMBER 4  
12-7-17 [[25](#)]

**Final Ruling:** No appearance at the February 13, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Cavalry SPV II, 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 II, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$421.20. Objector asserts that the claim should be disallowed because it does not include the date of the account holder's last transaction or the date of the last payment on the account. This information is required for a claim based on an open-end or revolving consumer credit agreement pursuant to Fed. R. Bankr. P. 3001(c)(3)(A).

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

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm First 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 not confirm the amended plan.

The plan must pay the secured claim of Ditech Financial, holder of the second deed of trust on the Debtor's primary residence, in full. On December 12, 2017, the court determined that the claim of Ditech Financial is only partially under-collateralized and that its secured claim is determined to be in the amount of \$10,158.92. Although a strip off of the entire loan is permitted pursuant to *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002) and *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (9th Cir. BAP 1997), a partial strip down of the loan is not permitted pursuant to *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993).

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.

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Motion to Approve Proposed Division of Property in Family Law Action 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.

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

Sara Klinkenborg ("Movant") requests that the court approve a proposed division of property in a family law action between Movant and debtor Monte Klinkenborg ("Debtor"). The claims and disputes to be resolved by the proposed settlement are detailed in the motion. See dkt. 78. Movant and Debtor have resolved these claims and disputes, subject to approval by the court.

#### DISCUSSION

Approval of a compromise that involves or affects property of the estate is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant has analyzed the second through third factors outlined in *A & C Properties* and *Woodson* but has not analyzed the first factor, which will be the court's focus. Rather than analyze her probability of success in litigation, Movant admits to the existence of a pending divorce action in another forum. Movant states that an appeal is now pending before the Third District Court of Appeals. Reaching a settlement in bankruptcy court is not the appropriate course of action to resolve the state court dispute.

The court determines that the compromise is not in the best interest of the creditors and the Estate. The motion is denied without prejudice.

The court will enter an appropriate minute order.

23. [12-38976](#)-B-13 DAVID TAM AND WENXIA GUO  
[17-2045](#) SW-1  
TAM ET AL V. WELLS FARGO BANK,  
N.A.

MOTION TO COMPEL, MOTION TO  
PROVIDE FURTHER RESPONSES TO  
WRITTEN DISCOVERY, MOTION TO  
PRODUCE DOCUMENTS AND/OR MOTION  
FOR SANCTIONS  
2-8-18 [[27](#)]

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

The court's decision is to grant the motion.

Wells Fargo Bank, N.A. ("Defendant") seeks to compel debtors David Tam and Wenxia Guo ("Plaintiffs") to (1) produce all documents requested by Defendant, (2) provide further responses to Defendant's written discovery, and (3) for monetary sanctions in the amount of \$2,385.00 plus the cost of filing this motion. Defendants separately request that the court extend the close of discovery deadline and pre-trial conference by at least 60 days.

Defendant states that it attempted on numerous occasions to try and resolve the matter informally or get an understanding of what Plaintiffs were seeking. Defendant ultimately propounded discovery to determine what Plaintiffs were seeking but received responses and production of documents that were nothing more than boilerplate objections with no substance or attempt to respond to Wells Fargo's discovery requests. As a result, Defendant filed this motion.

On November 14, 2017, counsel for Wells Fargo received Plaintiffs' boilerplate responses to interrogatories and requests for admissions. Additionally, the Plaintiffs failed to include any documents in response to the request for production of documents.

On December 5, 2017, counsel for Wells Fargo emailed counsel for Plaintiffs seeking to "meet and confer" on Plaintiffs responses. Plaintiffs' counsel's paralegal responded that he would need to confer with Plaintiffs counsel to get available dates.

On December 8, 2017, counsel for Wells Fargo followed up with Plaintiffs' counsel proposing possible meeting times.

On December 10, 2017, counsel for Wells Fargo followed up a second time proposing possible meeting times.

On December 14, 2017, counsel for Wells Fargo followed up a third time proposing possible meeting times.

On December 19, 2017, the parties finally met and conferred. The conversation included Wells Fargo's request for amended responses to discovery and Plaintiffs' counsel's suggestion for settlement. Wells Fargo's counsel also informed Plaintiffs' counsel that if the matter did not settle and amended responses were not received, Wells Fargo would file a Motion to Compel.

Although the parties discussed settlement, no settlement date was finalized. Given that the deadline to file dispositive motions is February 8, 2018, and there has been no resolution or amended responses, Defendant filed this motion.

No opposition has been filed by Plaintiff's counsel.

#### **Discussion**

Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permit the party propounding discovery to move to compel responses to interrogatories and a request for documents, respectively. Fed. R. Civ. P. 36(a)(6),

as made applicable by Fed. R. Bankr. P. 7036, permits a party serving a request for admissions to move for a determination of the sufficiency of an answer or objection and, if either are determined to be insufficient, permits the court to order the matter admitted or an amended answer served.

A court may compel discovery after the moving party has attempted in good faith to obtain such without court action. Fed. R. Civ. P. 37(a); Fed. R. Bankr. P. 7037. The movant must show that it conferred or attempted to confer in good faith. In order to comply with Fed. R. Civ. P. 37, the movant must accurately and specifically certify with whom, where, how, and when the movant attempted to personally resolve the discovery dispute. *Shuffle Master v. Progressive Games*, 170 F.R.D. 166, 170 (D. Nev. 1996). The movant must also certify that it has, in good faith, conferred or attempted to confer to resolve the discovery dispute without judicial intervention. *Id.* at 171.

Defendant has complied with the certification requirement because the declaration and exhibits in support of its motion to compel include the specific details of its attempts at communication with the Plaintiffs. The Defendant has also satisfied the performance requirement by attempting to confer with the Plaintiffs. Thus, the Defendant is entitled to an order: compelling adequate, complete, and amended responses to the Defendant's document requests, interrogatories, and request for admissions within 14 days of entry of the court's order.

The court has reviewed Plaintiffs' so-called responses to Defendant's document requests, Dkt. 27 at Ex. A, interrogatories, *id.* at Ex. B, and request for admissions, *id.* at Ex. C. Those purported responses consist exclusively of repetitive boilerplate objections to the discovery requested. To a large extent, the objections are nonsensical, improperly asserted, or otherwise not applicable. And in that regard, Plaintiffs' responses to Defendant's discovery requests are all insufficient.

Plaintiffs have made significant allegations against Defendant. Plaintiffs seek substantial damages from Defendant. Therefore, Plaintiffs may not (and will not) evade or avoid discovery.

Plaintiffs will be ordered to respond to Defendant's discovery requests to the fullest extent possible. Therefore, Plaintiffs will be ordered to provide amended responses to Defendant's document request, interrogatories, and request for admissions within the parameters set forth herein.

Attorney-client and work-product privilege objections asserted in response to the Defendant's discovery requests are not sufficient due to the absence of a privilege log accompanying the objections. See *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1132, 1149 (9th Cir. 2005) ("We hold that boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege. However, we also reject a per se waiver rule that deems a privilege waived if a privilege log is not produced within Rule 34's 30-day time limit."). Having considered *Burlington's* factors, *id.*, Plaintiffs will be given an opportunity to produce a privilege log with their amended responses if they intends to object to production of any document or other information on the basis of any privilege. That privilege log must comply with Fed. R. Civ. P. 26(b)(5); Fed. R. Bankr. P. 7026. The following decisions offer guidance on the contents of an acceptable privilege log that meets Rule 26(b)(5) standards. *In re Daily*, 2017 WL 4480737, \*4 fn. 4 (Bankr. D. Mont. 2017) and *Club Level, Inc. v. City of Wenatchee*, 618 Fed. Appx. 316, 319 (9th Cir. 2015). Plaintiffs are strongly encouraged to review those decisions. Failure to serve a privilege with amended responses will result in a waiver of the privilege.

Burdensome, broad, vague, ambiguous, confusing, and the like objections asserted in response to the document request, interrogatories, and request for admissions are also overruled. As are all other objections. Therefore, subject only to a proper claim of privilege, Plaintiffs are ordered to produce all documents in their possession, custody, and control responsive to Defendant's request. That includes any and all documents that Plaintiffs have access to, directly or indirectly through others. That also includes any and all bank and financial records regarding any account that has



been put in issue by Plaintiff's allegations none of which are privileged. That includes all documents requested even if those documents are or may be in Defendant's possession. The fact that Defendant may possess documents or the information requested is not an excuse to refuse production of requested documents or information.

Plaintiffs are also ordered to provide amended answers to all interrogatories and requests for admissions. As to the request for admissions, Plaintiffs' amended response shall conform with Fed. R. Civ. P. 36(a)(4); Fed. R. Bankr. P. 7036.

Plaintiffs have had sufficient time to properly respond to Defendant's discovery requests, including extensions, and therefore shall not be granted any further extension of the deadlines imposed herein.

Plaintiffs are advised that failure to comply with any aspect of this order will result in additional sanctions that may include, but are not necessarily limited to, dismissal and contempt. See Fed. R. Civ. P. 34(b)(2)(A); Fed. R. Bankr. P. 7034.

Finally, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Bankr. P. 7037. This is also authorized by the court's scheduling order. See Dkt. 14 at 2:17-3:17. This remedy, however, is limited only to expenses incurred in making the motion.

The Defendant is seeking a total of \$2,385.00 in attorney's fees plus the cost of filing this motion as expenses incurred in the bringing of this motion. The court concludes that the requested fees and expenses are reasonable and necessary for the preparation and prosecution of this motion. Therefore, the court will award Defendant's attorney's fees and expenses totaling \$2,385.00 plus cost of filing this motion. **The Plaintiffs (and not the Plaintiffs' attorney) shall pay these attorney's fees and expenses to Defendant's counsel no later than 14 days after the entry of the court's order and shall file a certification of payment with the court within 2 days after payment.** See Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Bankr. P. 7037 (permitting court to order party or attorney to pay fees).

Finally, the close of discovery deadline and pre-trial conference are extended by 60 days.

The motion is granted.

The court will enter an appropriate minute order.