UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 2, 2016 at 10:00 a.m.

1.	15-29704-B-13 JPJ-1	GARY HORTON Allan R. Frumkin	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 1-28-16 [12]

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.

This matter was continued from February 17, 2016, in order to be heard after the continued Meeting of Creditors held on February 18, 2016. No other objections have been filed by the Chapter 13 Trustee or creditors. The matter will be determined at the scheduled hearing.

The court shall enter an appropriate civil minute order consistent with this ruling.

2. 15-28207-B-13 DAVID/DEANNA TIBBETT MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria 1-14-16 [36]

Tentative Ruling: The Debtors' Motion to Confirm First Amended 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors projected disposable income is not being applied to make payments to unsecured creditors. The plan proposes to pay approximately $20,379.16 to Class 7 general unsecured creditors. However, the Debtors must pay no less than $31,339.80 to general unsecured creditors.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

3. 16-20707-B-13 EDWIN GATO MOTION TO EXTEND AUTOMATIC STAY
BLG-1 Pauldeep Bains 2-12-16 [9]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 9, 2015, after Debtor failed to cure the delinquency in plan payments (Case No. 15-23616, Dkt. 28). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor assert that he was unable to make plan payments because of unforeseen expenses related to a family emergency and his wife's long-term unemployment. Debtor states that his situation has now changed because he has restructured his finances to make the monthly plan payments and the family emergency expense was a one-time incident that is now behind him.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

4.	15-27708-B-13 JPJ-2	BRETT JAKSICH Brian L. Coggins	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 1-14-16 [25]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The Trustee's Motion of Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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)(ii) 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 convert this Chapter 13 case to a Chapter 7.

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

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

Second, Debtor is $1,800.00 delinquent, which represents 1 plan payment. By the time this matter is heard, two additional plan payments in the amounts of $1,800.00 each will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, the Debtor has failed to prosecute this case, causing unreasonable dleay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on December 2, 2015. To date, the Debtor has not taken further action to confirm a plan in this case.

Fourth, the Debtor has an interest in real property located in Round Rock, Texas. This interest was not listed in Schedule A. To the extent that there may be non-exempt equity in this real property, conversion to a Chapter 7 rather than dismissing the case is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has not appeared at the 341 Meeting of Creditors, is delinquent to the Trustee, has failed to prosecute this case, and has an interest in real property located in Round Rock, Texas, which may satisfy obligations owed to creditors. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

5.	12-36310-B-13 GW-4	CLAUDIO/MARISSA LUMBAN Gerald L. White	MOTION FOR COMPENSATION BY THE LAW OFFICE OF GERALD L. WHITE FOR GERALD L. WHITE, DEBTORS' ATTORNEY(S) 1-26-16 [67]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

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

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

FEES AND COSTS REQUESTED

Gerald L. White ("Applicant"), the attorney to Chapter 13 Debtors ("Clients"), makes a final request for the allowance of $1,050.00 in fees and $0.00 in expenses. The total attorney's fees and costs already approved in this case are $7,383.00. Dkt. 48. The Clients have opted out of the Guidelines. Dkt. 1, p. 48. The period for which the fees are requested is for January 28, 2014, through January 20, 2016. The Applicant further requests that the fees be paid by the Debtors since the plan has been completed and all claims have been paid in full 100%. The Debtors have filed a Declaration in support of the motion.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 71, pp. 6-7).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

> whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

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

Fees	$1,050.00
Costs and Expenses	$ 0.00

The court shall enter an appropriate civil minute order consistent with this ruling.

6.	15-27614-B-13 15-2255 MARICOPA ORCHARDS, LLC V. DEGUIRE	STEPHEN/SANDRA DEGUIRE MF-1	MOTION TO DISMISS ADVERSARY PROCEEDING 1-29-16 [7]

Final Ruling: No appearance at the March 2, 2016, hearing is required. Matter removed from calendar by order entered on February 23, 2016.

7.	15-27615-B-13 15-2256 MARICOPA ORCHARDS, LLC V. DEGUIRE	COREY DEGUIRE MF-1	MOTION TO DISMISS ADVERSARY PROCEEDING 1-29-16 [7]

Final Ruling: No appearance at the March 2, 2016, hearing is required. Matter removed from calendar by order entered on February 23, 2016.

8.	15-25816-B-13 SNM-3	JOSE CHAPA AND ESTHER SWENSEN-CHAPA Stephen N. Murphy	MOTION TO CONFIRM PLAN 1-13-16 [62]

Tentative Ruling: The Motion to Confirm Third Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $5,014.00, which represents approximately 1.5 plan payments. By the time this matter is head, an additional plan payment in the amount of $3,180.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtors have not provided the Trustee with a Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

9.	12-38217-B-13 JPJ-5	ALLEN TAPP AND MELINDA HILL Candace Y. Brooks	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 1-27-16 [39]

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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

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

First, the Debtor is $558.00 delinquent in plan payments, which represents 1.5 plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, there is non-exempt equity in Debtors' 1/3 interest in 5 acres of real property located in Myrtle Creek, Oregon in the amount of $16,420.87. Due to this non-exemption, Movant asserts that conversion to a Chapter 7 rather than dismissal is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Response by Debtors

Debtors concede that they were delinquent 1.5 plan payments but assert that they have cured this defect and can continue with their Chapter 13 plan payments. Debtors state that they fell behind on plan payments because Debtor Allen Tapp was working in Fresno and incurred additional lodging expenses of $635.00. Debtor no longer is working in Fresno and thus is not incurring lodging expenses. Debtors also assert that they will be able to fund plan payments since Co-Debtor Melinda Hill has become employed, bringing in a net income of $1,200.00 to $1,400.00. Debtors are in month 40 of their 60-month plan. Although the Debtors have not filed an amended Schedule I and J, the revised schedules are included as exhibits.

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 or dismiss this case pursuant to 11 U.S.C. § 1307(c) since the Debtors have become current on their plan payments and appear to be able to continue funding their plan. However, the Debtors must file with the court an amended Schedule I and J. The motion is denied without prejudice and the case is not converted nor dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. 14-27917-B-13 SJS-3 — GARY DELFINO AND JAQULINE NERUTSA, Matthew J. DeCaminada — MOTION TO MODIFY PLAN 1-22-16 [72]

Tentative Ruling: The Debtors' 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,376.00, which represents approximately 0.5 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,626.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $2,626.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,742.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the modified plan does not specify a cure of the post-petition arrearage owed to Chase including a post-petition arrearage amount, interest rate, and monthly dividend.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

11.	16-20317-B-13 SMR-1	LARIESHA GLOVER Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-3-16 [14]
	JANICE DARLING VS. DEBTOR DISMISSED: 02/08/2016		

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The case having previously been dismissed, the motion for relief from automatic stay is dismissed as moot.

12.	14-29019-B-13 JPJ-2 **Thru #13**	KRISTINA SAAR Matthew J. DeCaminada	OBJECTION TO CLAIM OF CONSUMER PORTFOLIO SERVICES, CLAIM NUMBER 9 1-6-16 [39]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The objection to proof of claim 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. 9 of Consumer Portfolio Services and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Consumer Portfolio Services ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $9,160.98. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit is January 14, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Creditor's Proof of Claim was filed December 3, 2015.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall enter an appropriate civil minute order consistent with this ruling.

13.	14-29019-B-13 JPJ-3	KRISTINA SAAR Matthew J. DeCaminada	OBJECTION TO CLAIM OF CONSUMER PORTFOLIO SERVICES, CLAIM NUMBER 10 1-6-16 [43]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The objection to proof of claim 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 of Consumer Portfolio Services and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Consumer Portfolio Services ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $9,160.98. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit is January 14, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Creditor's Proof of Claim was filed December 9, 2015.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall enter an appropriate civil minute order consistent with this ruling.

14.	13-22120-B-13 JPJ-2	PHILLIP PRIOR W. Scott de Bie	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-19-16 [33]

Tentative Ruling: The court issues no tentative ruling. The motion will be determined at the scheduled hearing.

15.	14-22225-B-13 JPJ-2	EMMANUEL MURALLO AND FRANCIESCA MENDOZA Eric John Schwab	OBJECTION TO CLAIM OF CARRINGTON COLLEGE, CLAIM NUMBER 16 1-6-16 [40]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The objection to proof of claim 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. 16 of Carrington College and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Carrington College ("Creditor"), Proof of Claim No. 16 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,368.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit is July 16, 2014. Notice of Bankruptcy Filing and Deadlines, Dkt. 9. The Creditor's Proof of Claim was filed December 21, 2015.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. 15-29825-B-13 VASUDEVA BENARD
JAA-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR DEUTSCHE BANK NATIONAL TRUST COMPANY
1-29-16 [23]

THIS OBJECTION WAS IMPROPERLY CALENDARED FOR 3/2/2016. ACCORDING TO THE CHAPTER 13 MEETING NOTICE, THE CONFIRMATION HEARING IS SET FOR 3/16/2016 AT 10:00 A.M. THE CONFIRMATION HEARING WILL BE CONTINUED TO 4/5/2016 AT 10:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

17. 12-29929-B-13 CHARLES/JULITA BENTZ — MOTION TO APPROVE LOAN MODIFICATION
PGM-1 Peter G. Macaluso — 1-25-16 [55]

Tentative Ruling: The Motion for Order Approving 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

There appears to be some discrepancy with the motion, declaration, exhibits, and plan filed October 25, 2012. The motion states that the loan modification is with Wells Fargo Bank, N.A., the declaration states that the loan modification is with America's Servicing Company, the exhibits provide a loan modification with Wells Fargo Bank, N.A., and the plan filed October 25, 2012, lists a claim for ASC (presumably America's Servicing Company) in Class 3.

Since the court is unable to tell who the loan modification is with, this matter is continued to March 16, 2016, at 10:00 a.m. to provide the Debtors with an opportunity to provide additional disclosures and clarification regarding the identity of the lender. Additional disclosures and clarification shall be filed by March 9, 2016.

18. 15-26933-B-13 PETE GARCIA
JPJ-3 Peter G. Macaluso

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
1-11-16 [43]

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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

This motion has been filed by Jan P. Johnson ("Movant"), Chapter 13 Trustee. Movant asserts that the case should be converted, or in the alternative dismissed, based on the ground that the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of chapter 13 plan was heard and sustained on November 18, 2015. On February 8, 2016, the Debtor filed a first amended plan, which is set for confirmation hearing on April 6, 2016.

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 or dismiss this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed a first amended plan and is thus taking steps to prosecute his case. The motion is denied without prejudice and the case is not converted nor dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

19. 15-25534-B-13 LAWRENCE/KAPRICE CRAWFORD — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
JPJ-2 Julius M. Engel — 1-12-16 [41]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

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 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)(ii) 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 convert this Chapter 13 case to a Chapter 7.

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

First, the Debtors are $4,875.00 delinquent in plan payments, which represents 2 plan payments. By the time this matter is heard, two additional plan payments in the amounts of $2,475.00 each will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, according to Schedules A and B filed July 22, 2015, and amended Schedule C filed August 21, 2015, the Debtors' total non-exempt property is $74,121.67. Due to the existence of non-exempt property, conversion to a Chapter 7 rather than dismissing the case is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since Debtors are delinquent 2 plan payments and there is non-exempt property in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

20.	15-26834-B-13 PGM-1	CLYDE HUGHES Peter G. Macaluso	CONTINUED MOTION TO CONFIRM PLAN 12-9-15 [35]

Tentative Ruling: The court issues no tentative ruling. The motion will be determined at the scheduled hearing.

21.	15-28634-B-13 JPJ-2	PALMER COOKE Mikalah R. Liviakis	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-25-16 [31]

DEBTOR DISMISSED: 02/05/2016

Final Ruling: No appearance at the March 2, 2016, hearing is required.

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

22.	15-24335-B-13 PGM-2	BENJAMIN BARNES AND JENNIFER VARELA-BARNES Peter G. Macaluso	CONTINUED MOTION TO MODIFY PLAN 11-18-15 [53]

Tentative Ruling: The court issues no tentative ruling. The motion will be determined at the scheduled hearing.

23. 15-27843-B-13 TARILYN ELLIOTT MOTION TO EXTEND TIME
JPJ-1 Michael David Croddy 2-2-16 [38]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The Motion to Extend 75 Day Deadline to Confirm Chapter 13 Plan or Be Dismissed has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to extend the 75 day deadline to confirm a plan.

Debtor seeks to extend the 75 day deadline to confirm a Chapter 13 plan. The Debtor states that she has had difficulties making plan payments and filing a first amended plan due to medical conditions and other reasons related to victims of crime of domestic violence. Debtor requests that the deadline to confirm a Chapter 13 plan be extended by 4 days to 79 days to include March 16, 2016.

The motion is granted and the deadline to confirm a Chapter 13 plan is extended by 4 days to include March 16, 2016.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. 15-29445-B-13 KEVIN MITCHELL MOTION TO CONFIRM PLAN
SJS-2 Matthew J. DeCaminada 1-18-16 [27]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The Debtor's Motion to Confirm First Amended Plan has been set for hearing on the 42-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)(ii) 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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors 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 filed on January 18, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

25. 15-29351-B-13 FILIBERTO VAZQUEZ
TOG-3 Thomas O. Gillis

MOTION TO CONFIRM PLAN
1-18-16 [33]

DEBTOR DISMISSED: 01/28/2016

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The case having previously been dismissed, the motion to confirm plan is dismissed as moot.

26. 15-27954-B-13 TERRY/TAMITRICE MITCHELL MOTION TO CONFIRM PLAN
MET-1 Mary Ellen Terranella 1-20-16 [27]

Tentative Ruling: The Motion to Confirm Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan does not properly account for all payments the Debtors have paid to the Trustee to date.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. When taking into account the understatement of Debtors' gross monthly income on Form 22C and the overstatement of deductions at Lines 33d, 43b, and 30 of Form 22C, Line 45 should be $1,697.91 and the Debtors must pay no less than $101,874.60 to the general unsecured creditors. The plan filed January 20, 2016, only proposes to pay 1% or approximately $2,554.97.

Third, the plan will take approximately 87 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 amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

27. 15-27658-B-13 MONICA BURTON
MDL-3 Michael D. Lee

MOTION TO CONFIRM PLAN
1-12-16 [58]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The Motion to Confirm Third Amended Chapter 13 Plan has been set for hearing on the 42-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)(ii) 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 third amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor 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 filed on January 12, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

28. 15-21159-B-13 BARBARA PISTELLA
JPJ-1 Michael O'Dowd Hays

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
1-12-16 [22]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

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 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)(ii) 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 convert this Chapter 13 case to a Chapter 7.

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

First, the Debtor is $716.00 delinquent in plan payments, which represents 2 plan payments. By the time this matter is heard, two additional plan payments in the amounts of $358.00 each will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, according to Schedules A, B, and C filed February 16, 2015, the Debtor's total non-exempt property is $74,121.67. Due to the existence of non-exempt property, conversion to a Chapter 7 rather than dismissing the case is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since Debtor is delinquent 2 plan payments and there is non-exempt property in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

29. 15-29565-B-13 FRANK/CRYSTAL BARGIEL MOTION TO CONFIRM PLAN
EJS-4 Eric John Schwab 1-11-16 [40]
Thru #30

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan payment in the amount of $2,714.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $3,665.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the plan does not appear to have been filed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because the Debtors are making voluntary retirement contributions of $374.00 per month that could instead by used toward repaying their creditors. If an additional $250.00 per month were paid to the general unsecured creditors, over the life of the plan this would pay an additional $14,062.50 to general unsecured creditors after accounting for Trustee's fees.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

30. 15-29565-B-13 FRANK/CRYSTAL BARGIEL COUNTER MOTION TO DISMISS CASE
EJS-4 Eric John Schwab 2-17-16 [56]

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

31. 15-24767-B-13 SUE WILLIAMSON
SJS-3 Matthew J. DeCaminada

MOTION TO CONFIRM PLAN
1-14-16 [68]

DEBTOR DISMISSED: 01/07/2016

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The case having previously been dismissed, the motion to confirm plan is dismissed as moot.

32. 16-20568-B-13 NATALIE PELTON
RJ-1 Richard L. Jare

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE
2-3-16 [10]

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

The motion will be determined at the scheduled hearing.

33. 16-20573-B-13 FELICIANO RIOS MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 2-4-16 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on January 27, 2016, after Debtor became delinquent on plan payments (Case No. 15-27400, Dkt. 26). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that he suffered a temporary loss of income due to a continued deduction of a higher child support payment at the amount of $1,200.00 per month, which was to have been reduced commencing in October 2015 to $206.00. The child support deduction has been resolved and Debtor asserts that he can make his proposed plan payments. The Debtor asserts that an extension of the automatic stay is necessary to protect his family home from possible foreclosure.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

34. 15-21677-B-13 EDWARD BROWN MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 1-19-16 [57]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated January 19, 2016, 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The plan cannot be fully assessed for feasibility or effectively administered because the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

35. 16-20587-B-13 TERRY ARNOLD MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott D. Hughes 2-9-16 [9]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 11, 2015, after Debtor failed to make plan payments (Case No. 14-32045, Dkt. 23). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that he fell behind on plan payments because he had to pay approximately $50,000.00 in attorney's fees and criminal restitution to keep his son out of jail for involvement in a DUI car accident. Because of this, the Debtor asserts that he was unable to cure the delinquency in plan payments. Rather than try to modify the plan and increase the payments to include all the missed mortgage payments, the Debtor decided to file a new bankruptcy case. The Debtor asserts that his new plan offers to pay 100% of all unsecured creditors and that he has regular and sufficient income to afford the payments in this case.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

36. 15-27491-B-13 SALLY YATES
RLC-2 Stephen M. Reynolds

MOTION TO VALUE COLLATERAL OF RTED AMERICA, LLC
1-21-16 [41]

Final Ruling: No appearance at the March 2, 2016, hearing is required.

The Motion to Value Secured Portion of Claim of RTED America, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) 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 value the secured claim of RTED America, LLC at $13,000.00.

The motion to value filed by Debtor to value the secured claim of RTED America, LLC ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3401 Kentfield Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $215,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by RTED America, LLC is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $202,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $72,436.64. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $13,000.00, and therefore payments in the secured amount of the claim 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.

The court shall enter an appropriate civil minute order consistent with this ruling.

37. 15-28095-B-13 PAVEL KARAMALAK — CONTINUED MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso — 1-6-16 [31]
Thru #39

MATTER CONTINUED TO 4/5/16 AT 1:00 P.M. IN LIGHT OF MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC AND MOTION TO AVOID LIEN OF CITIBANK, N.A. AT ITEMS #38 AND #39, RESPECTIVELY.

38. 15-28095-B-13 PAVEL KARAMALAK — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
PGM-2 Peter G. Macaluso — 1-25-16 [38]

MATTER CONTINUED TO 4/5/16 AT 1:00 P.M.

39. 15-28095-B-13 PAVEL KARAMALAK — MOTION TO AVOID LIEN OF CITIBANK, N.A.
PGM-3 — 1-25-16 [43]

MATTER CONTINUED TO 4/5/16 AT 1:00 P.M.

40. 16-20581-B-13 BRODIE STEPHENS
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
2-25-16 [14]

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 to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 4, 2015, upon Debtor's filing of a voluntary dismissal (Case No. 10-47740, Dkt. 82). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that during the pendency of his last case, his business failed and he was unable to pay his bills. Since that time, the Debtor states that his situation has changed since his business is now closed and he is now working as a real estate agent. The Debtor has filed this new case in order to retain his vehicle, reduce his debt, and pay his creditors. Debtor asserts that the combined monthly household net income from him and his wife is sufficient to pay the plan payment of $1,500.00 per month.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.