

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 14, 2017 at 1:00 p.m.

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1. [15-27710](#)-B-13 SHANE/EDEN JACK MOTION TO CONVERT CASE TO
JPJ-3 Kristy A. Hernandez CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
2-10-17 [[59](#)]

Tentative Ruling: The Trustee's Motion to Convert Case to Chapter 7 and/or Motion to 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 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 based on the ground that Debtors are delinquent to the Trustee in the amount of \$11,050.00, which represents approximately 5 plan payments, and an additional plan payment in the amount of \$2,210.00 will also be due by the date of the hearing on this motion. Since non-exempt equity in the estate is \$17,285.00, Trustee asserts that conversion rather than dismissal is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Response by Debtors

Counsel for the Debtors has filed a response stating that she has attempted to communicate with her clients numerous times by phone, email, and regular mail but was unable to reach Debtors. In light of the lack of communication from the Debtors, counsel for Debtors cannot offer any opposition to the Trustee's motion.

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

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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 Debtors are delinquent in plan payments and there is non-exempt equity in the estate. Debtors' counsel has been unsuccessful in reaching her clients. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

2. [12-39713](#)-B-13 DONALD FLAVEL
MAC-4 Marc A. Carpenter

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
12-4-15 [[68](#)]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

This matter was continued from February 7, 2017, before that from January 3, 2017, and before that from October 18, 2016. The Debtor filed a status report on January 29, 2017, stating that Capital One, N.A. continues to review Debtor's information in order to reach a decision to modify Debtor's current mortgage loan that is secured by his residence.

No additional documents have been filed as of March 13, 2017.

3. [17-20015](#)-B-13 ERIK HUGHES
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[18](#)]

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.

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 for his fiancé, whose income is listed under Line #2 of Schedule B. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

The plan filed January 3, 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.

Final Ruling: No appearance at the March 14, 2017, hearing is required.

The Motion to Confirm First 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 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 20, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5. [17-20020](#)-B-13 BRENDA PEARL
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[29](#)]

CONTINUED TO 3/21/17 TO BE HEARD IN CONJUNCTION WITH THE DEBTOR'S MOTION TO
VALUE COLLATERAL OF JPMORGAN CHASE BANK.

Final Ruling: No appearance at the March 14, 2017, hearing is required. The court will
enter an appropriate minute order.

6. [15-29322](#)-B-13 JAMES/TRACEE LEWIS
ALF-12 Ashley R. Amerio

MOTION TO SUBSTITUTE
REPRESENTATIVE FOR DEBTOR AND
NOTICE OF DEATH
2-9-17 [[131](#)]

Final Ruling: No appearance at the March 14, 2017, hearing is required.

The Motion for Substitution and Suggestion of Death 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 deny the motion without prejudice.

Joint Debtor gives notice of death of her husband and Debtor James Lewis and requests the court substitute Tracee Lewis in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule**

7005 and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

See also Hawkins v. Eads, supra. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, although Joint Debtor has provided evidence of her husband's death and that she is an appropriate representative for the deceased, the Joint Debtor has failed to provide sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. The Joint Debtor's declaration makes no statement as to whether she is current on plan payments or able to fund the plan. As such, the motion is denied without prejudice.

The court will enter an appropriate minute order.

7. [15-24826](#)-B-13 CLIFFORD/KATHLEEN MOTION TO MODIFY PLAN
MET-5 GIANNUZZI 2-14-17 [[103](#)]
Mary Ellen Terranella

CONTINUED TO 3/21/17 AT 1:00 P.M.

Final Ruling: No appearance at the March 14, 2017, hearing is required. This matter was miscalendared for today's hearing and is actually scheduled for March 21, 2017, at 1:00 p.m. See *dk.* 103, 104. The motion to modify will be continued to the correct hearing date and time.

8. [13-30333](#)-B-13 MICHAEL/SUZANNE FINCH MOTION TO MODIFY PLAN
DEF-3 David Foyil 1-26-17 [[60](#)]

Final Ruling: No appearance at the March 14, 2017, hearing is required.

The Motion to Confirm Second Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on January 26, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

9. [15-25534](#)-B-13 LAWRENCE/KAPRICE CRAWFORD MOTION TO RECONVERT CASE TO
JPJ-3 Peter G. Macaluso CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
2-9-17 [[95](#)]

Tentative Ruling: The Trustee's Motion to Reconvert 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 continue the matter to April 18, 2017, at 1:00 p.m.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the ground that Debtors are delinquent to the Trustee in the amount of \$7,712.00, which represents approximately 3 plan payments, and an additional plan payment in the amount of \$2,790.00 will also be due by the date of the hearing on this motion. Since non-exempt equity in the estate is \$76,863.92, Trustee asserts that conversion rather than dismissal is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Response by Debtor

Debtors filed a response stating that they will file, set, and serve a modified plan and be current under the modified plan. Debtors state that the modified plan will be filed in conjunction with a motion to approve loan modification with Ocwen Loan Servicing. Debtors assert that they have been making mortgage payments directly to Ocwen Loan Servicing and that they have entered into a trial loan modification with the lender. Debtors state that they have been making payments to the Trustee but that they payments are not in the full amount because of the direct mortgage payments being paid to Ocwen Loan Servicing. Debtors request a continuance of this motion for the motion to confirm the modified plan and motion to approve loan modification to be heard.

The court's docket reflects that a modified plan was filed on March 9, 2017. The hearing on the motion to modify is scheduled for April 18, 2017, at 1:00 p.m. The Trustee's motion to reconvert the case or alternatively dismiss case will be continued to that date and time. If the modified plan is not confirmed, the case will be reconverted to one under Chapter 7.

The court will enter an appropriate minute order.

10. [13-26844](#)-B-13 DIOSDADO RODRIGUEZ MOTION TO APPROVE LOAN
SDH-2 Scott D. Hughes MODIFICATION
2-13-17 [[36](#)]

Final Ruling: No appearance at the March 14, 2017, 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). However, it does not appear that the Debtor provided proper service of process to Wells Fargo Bank, N.A. The addresses on which service was made do not match with any address for service of process as listed on the California Secretary of State website or the Federal Deposit Insurance Corporation website. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

11. [17-20746](#)-B-13 TRACE CORTELL
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF
BMW BANK OF NORTH AMERICA
2-28-17 [[17](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of BMW Bank of North America 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 value the secured claim of BMW Financial Services at \$17,000.00.

Debtor's motion to value the secured claim of BMW Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 BMW 328i ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$17,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by BMW Bank of North America is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about December 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$35,047.71 based on Claim No. 1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$17,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

12. [17-20048](#)-B-13 DAMION HRIBIK
JPJ-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[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 has failed to file an amended Schedule I to reflect his actual gross monthly earnings as well as his plan to increase the dividend to his unsecured creditors. The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties and feasibility of the plan cannot be determined. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3) and 11 U.S.C. § 1325(a)(1).

Second, the plan payment in the amount of \$2,320.00 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, and Class 2 monthly dividends. The aggregate of the monthly amounts plus the Trustee's fee is \$2,573.83. The plan does not comply with Section 4.02 of the mandatory form plan.

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

Because the plan is not confirmable, the 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.

13. [17-20249](#)-B-13 ANGELICA OFFENBECHER
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[17](#)]

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 plan will take approximately 98 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).

Second, the plan payment in the amount of \$2,675.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims for months 4 through 60. The aggregate of the monthly amounts plus the Trustee's fee is \$3,406.86. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. At the value according to the Trustee's preliminary investigation, the total amount of non-exempt real property in the estate, using an 8% cost-of-sale for Debtor's real property, is between \$4,008.27 to \$14,235.27. Additionally, with regard to personal property listed on Schedule A/B, the value of non-exempt property is \$2,613.00, using a cost-of-sale, for a combined non-exempt total of \$6,621.27 to \$16,848.27, between real and personal property. The total amount that would be paid to unsecured creditors is \$1,619.57.

Fourth, the Debtor has not amended the Statement of Financial Affairs to correct the amount that Debtor paid to her attorney prior to her petition date as testified by the Debtor at the meeting of creditors. The amount Debtor paid to her attorney was \$1,000.00 and not \$2,000.00 as listed on Line #16 of the Statement of Financial Affairs.. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 16, 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.

14. [17-20253](#)-B-13 JENNY LOPEZ
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[15](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 failed to appear at the duly noticed first meeting of creditors set for February 16, 2017, as required pursuant to 11 U.S.C. § 343.

Second, 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).

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 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).

Fifth, the plan payment in the amount of \$1,060.00 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. The aggregate of the monthly amounts plus the Trustee's fee is \$1,220.06. The plan does not comply with Section 4.02 of the mandatory form plan.

Sixth, feasibility cannot be assessed as to whether the Debtor's plan is compliant with 11 U.S.C. § 1325(a)(4). The Debtor lists a retirement account under Line #8g on Schedule I but fails to list this retirement income as an asset under Line #21 on Schedule A/B.

The plan filed January 17, 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.

15. [17-20155](#)-B-13 RUMMY SANDHU
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-22-17 [[28](#)]

CONTINUED TO 3/21/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S
MOTION TO VALUE COLLATERAL OF EMC MORTGAGE.

Final Ruling: No appearance at the March 14, 2017, hearing is required. The court will
enter an appropriate minute order.

16. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE
CK-5 NASH
Catherine King

MOTION TO MODIFY PLAN
2-1-17 [[114](#)]

Tentative Ruling: The Motion to Confirm 2nd Modified 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)(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 plan does not properly account for all payments the Debtors have paid to the Trustee to date. The plan proposes plan payments of \$5,000.00 commencing January 2017. The Debtors paid the Trustee \$7,153.00 on January 17, 2017. The Debtors have paid a total of \$279,342.55 to the Trustee through January 2017.

Second, the modified plan does not specify a cure of the post-petition arrearage owed to America's Servicing Company listed in Class 1 of the plan, including a specific post-petition arrearage amount, interest rate and monthly dividend. The Trustee is therefore unable to fully comply with § 2.08(b) of the plan.

Third, the plan payment in the amount of \$5,000.00 for the months of 43 to 48 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 and/or Class 2 secured claims as required pursuant to Section 5.02 of the form plan. The aggregate of the monthly amounts plus the Trustee's fee is \$5,146.10. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, the plan payment in the amount of \$8,006.00 commencing July 2017, month 49, 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 and/or Class 2 secured claims as required pursuant to Section 5.02 of the form plan. The aggregate of the monthly amounts plus the Trustee's fee is \$8,211.31. The plan does not comply with Section 4.02 of the mandatory form 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.

17. [16-26572](#)-B-13 FRANK RUBALCAVA AND
DJC-2 ARIANA CABRAL
Diana J. Cavanaugh

MOTION TO CONFIRM PLAN
1-22-17 [[32](#)]

Final Ruling: No appearance at the March 14, 2017, hearing is required.

The Motion to Confirm Debtors' First 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 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 22, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

18. [16-21574](#)-B-13 RODNEY/ANNA RATH MOTION TO CONVERT CASE TO
JPJ-2 Mohammad M. Mokarram CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
2-10-17 [[68](#)]

CASE DISMISSED: 3/06/17

Final Ruling: No appearance at the March 14, 2017, hearing is required. The case was dismissed on March 6, 2017. The Trustee's Motion of Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case will be dismissed as moot.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the March 14, 2017, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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'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 February 1, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

20. [16-28351](#)-B-13 SHASHI MANI
PPR-1 George T. Burke

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK, N.A.
1-20-17 [[29](#)]

Final Ruling: No appearance at the March 14, 2017, hearing is required.

U.S. Bank, N.A. having withdrawn its Objections to Proposed Chapter 13 Plan and Confirmation Thereof, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed December 30, 2016, will be confirmed.

The court will enter an appropriate minute order.