UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 1, 2018 at 1:00 p.m.

1.	17-24701-B-13 JPJ-1	TONIA BRAEMER Nikki Braemer	OBJECTION TO CLAIM OF FORT SUTTER SURGERY CENTER, CLAIM NUMBER 21 3-15-18 [37]

Final Ruling: No appearance at the May 1, 2018, 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. 21 of Fort Sutter Surgery Center and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Fort Sutter Surgery Center ("Creditor"), Proof of Claim No. 21 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $591.35. 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 was December 13, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed December 20, 2018.

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 fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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 will enter an appropriate minute order.

2. 18-21512-B-13 MET-1 DENNIS/ROBIN COBB
Mary Ellen Terranella
MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
4-7-18 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Santander Consumer USA 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 Santander Consumer USA at $13,400.00.

Debtors' motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2012 Mercedes Benz C350 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $13,400.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Santander Consumer USA, Inc 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 March 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $29,315.67. 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 $13,400.00. *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.

3. 18-21113-B-13 JPJ-1 — TIMOTHY/SHERRIE BENDER — Richard A. Hall — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-12-18 [15]

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

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 20, 2018. The confirmation hearing for the amended plan is scheduled for June 19, 2018. The earlier plan filed February 28, 2018, is not confirmed.

The court will enter an appropriate minute order.

4. 16-20018-B-13 JOJIE GOOSELAW MOTION TO MODIFY PLAN
PGM-8 Peter G. Macaluso 3-21-18 [134]

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 21, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 21, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

5.	18-21221-B-13 JPJ-1	JEFFREY/LORNA FUKUSHIMA Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-12-18 [14]

CONTINUED TO 5/15/18 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The court will enter an appropriate minute order.

6. 18-21423-B-13 KAMRAN MALIK
RPZ-1 Pro Se

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
3-22-18 [11]

DEBTOR DISMISSED: 03/30/2018

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The case having been dismissed on March 30, 2018, CitiMortgage, Inc.'s motion to confirm termination of stay under § 362(c)(4)(A) is denied as moot.

The court will enter an appropriate minute order.

7. 17-27127-B-13 SHERWIN BRAMLETT
KSR-2 Peter Macaluso

MOTION TO DISMISS CASE
3-14-18 [83]

CONVERTED: 4/26/2018

Final Ruling: No appearance at the May 1, 2018, hearing is required.

A notice of conversion to Chapter 7 having been filed on April 26, 2018, the motion to dismissed is denied as moot.

The court will enter an appropriate minute order.

8. 18-22032-B-13 BARBARA GIAMMARCO
LBG-1 Lucas B. Garcia

MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO IMPOSE AUTOMATIC STAY
4-5-18 [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 deny without prejudice the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) (and not § 362(c)(3) as stated in the motion) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy active in the last 12 months was dismissed on August 1, 2017, after Debtor failed to cure her delinquency in plan payments (case no. 16-28365, dkt. 59). The Debtor's second bankruptcy active in the last 12 months was dismissed on January 21, 2018, after Debtor failed to cure her delinquency in plan payments and failed to file an amended plan (case no. 17-25759, dkt. 36).

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

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

Discussion

The Debtor does not explain why the previous cases were filed. The Debtor does state, however, that the instant case was filed to prevent the foreclosure of her residence. The Debtor also explains that her circumstances have substantially changed from her two prior bankruptcy cases because she learned from her brother, who attends to their late mother's estate, that she stands to receive 50% of their mother's assets. Debtor states in her declaration that she does not yet know the amount, but that her brother is confident that the asset will be enough to satisfy the arrears on Debtor's mortgage and allow her to keep her home. *See* dkt. 10, p. 2.

The Debtor also states that she fell behind on plan payments in the previous two cases because she believed that payments went into effect *after* confirmation, but the court is not persuaded. The Debtor has filed a total of five bankruptcy cases and in each of the five cases she was represented by counsel. The court is not persuaded that the Debtor was unaware of her obligations as a debtor or that she could have been uninformed by counsel.

While the Debtor asserts that there has been a substantial change in her financial affairs due to the anticipated assets she will receive from her mother's estate, the

Debtor provides no evidence of this other than hearsay evidence in her declaration. The Debtor does not provide a declaration from her brother that states Debtor will receive 50% of her mother's estate or that it is sufficient to satisfy the arrears on Debtor's mortgage.

In conclusion, Debtor has not offered a sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is denied without prejudice.

The court will enter an appropriate minute order.

9. 17-25233-B-13 NICOLE SADLER MOTION TO MODIFY PLAN
MOH-1 Michael O'Dowd Hays 3-16-18 [42]

Tentative Ruling: The Debtor's Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming increase Debtor's plan payment to $476.00 per month starting April 2018.

The plan payment in the amount of $465.00 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 $476.00. The Trustee does not oppose the Debtor increasing her plan payment to $476.00 starting April 2018 in the order confirming to resolve this issue.

Provided that the order confirming increase Debtor's plan payment to $476.00 per month starting April 2018, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

10. 18-21245-B-13 CRISELDA CENTENO
JPJ-1 Tyson Takeuchi

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-11-18 [14]

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

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

First, the Debtor did not appear at the meeting of creditors set for April 5, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Therefore, attorney's fees and costs will not be approved in connection with confirmation of the plan and counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Third, the Debtor has claimed an interest in personal items as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Fourth, the Debtor has not provided the Trustee with requested copies of certain items related to business Criselda Centeno Realtor including, but not limited to, a completed business examination checklist, income tax returns for the two-year period prior to the filing of the petition, bank account statements for the six-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, according to Schedule I, the Debtor's net income from rental property and/or operation of a business is $6,268.33. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses. The plan cannot be fully assessed for feasibility.

The plan filed March 4, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

11. 17-22648-B-13 DONALD TRECO MOTION TO CONFIRM PLAN
RAH-10 Richard A. Hall 3-9-18 [129]

Tentative Ruling: The Motion to Confirm Third Amended Chapter 13 Plan Dated March 9, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The plan cannot be effectively administered because the terms for payment of Debtor's attorney's fees and other administrative expenses are unclear. Section 3.06 of the plan 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 Trustee notes that the amount of $90.00 per month would work and does not oppose this modification being included in the order confirming the plan. The Debtor filed a response stating that the addition of $90.00 per month for attorney's fees and other administrative expenses can be included in the order confirming.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

12. 13-36051-B-13 KEVIN MEADOWS
AP-1 Rabin J. Pournazarian
Thru #14

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-20-18 [50]

WELLS FARGO BANK, N.A. VS.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1205 Greenwich Drive, Chico, California (the "Property"). Movant has provided the Declaration of Nhung Nguyen to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Nguyen Declaration states that there are 3 post-petition defaults, with a total of $1,934.59 in post-petition payments past due.

Debtor, through his attorney Rabin Pournazarian, filed an opposition that states Debtor passed away on December 21, 2017, and that the administrator of the estate, Lacy Meadows, paid the post-petition defaults. Debtor has filed evidence showing that payment was made on April 3, 2018. *See* exh. 1, dkt. 72

Discussion

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

The motion is denied without prejudice.

The court will enter an appropriate minute order.

13. 13-36051-B-13 KEVIN MEADOWS
JPJ-2 Rabin J. Pournazarian

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
3-27-18 [57]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

14.	13-36051-B-13 PLG-3	KEVIN MEADOWS Rabin J. Pournazarian	MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE TO THE DECEASED AND/OR MOTION FOR CONTINUED ADMINISTRATION OF THE CASE, MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE, MOTION/APPLICATION TO WAIVE THE SECTION 1328 CERTIFICATE REQUIREMENTS 4-11-18 [63]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Substitution as the Representative to the Deceased, Continued Administration of Case, Waiver of Post-Petition Education Requirement for Entry of Discharge, and Waiver of Certification of Requirements for Entry of Discharge 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 substitute Lacy Meadows, who is appointed representative of the estate, to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Debtor Kevin Meadows, by and through his attorney Rabin Rournazarian, gives notice of death of Debtor and requests that the court substitute Debtor's daughter Lacy Meadows in place of her deceased father 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, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. Debtor's Chapter 13 plan was confirmed on June 10, 2014, and Debtor's estate wishes to continue with this case. Lacy Meadows has consented to act as the representative of the deceased Debtor in this bankruptcy proceeding. This specific individual as representative is appropriate because Lacy Meadows is the deceased's daughter and the administrator of his estate. *See* exh. 2, dkt. 66. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The deceased Debtor's certification otherwise required for entry of a discharge is waived. The court grants the motion.

The court will enter an appropriate minute order.

15. 18-21262-B-13 JOHN SAECHAO
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-11-18 [24]

CONTINUED TO 5/08/18 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO AVOID LIEN OF CAPITAL ONE BANK AND MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION.

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The court will enter an appropriate minute order.

16. 15-25764-B-13 MAX/NATALIA GULKO — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 Mark Shmorgon — 3-22-18 [73]

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the May 1, 2018, hearing is required.

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

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

JPMorgan Chase Bank, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5157 Thomasino Way, Antelope, California (the "Property"). Movant has provided the Declaration of Della Walker to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Walker Declaration states that there are 6 post-petition defaults, with a total of $6,301.59 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $183,315.19 as stated in the Relief from Stay Summary Sheet. The value of the Property is determined to be $190,000.00 as stated in Schedules A and D filed by Debtors. Debtors' equity cushion is in the amount of $6,684.81.

Discussion

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

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay where there is an equity cushion to adequately protect the creditor. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). In this case, the house is valued at $190,000.00. Movant holds a claim of $153,485.45 leaving only $6,684.81 of equity. This small equity cushion is insufficient to protect the Movant whose claim is not being paid.

Additionally, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). The Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having

lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

17. 18-20768-B-13 DENNIS GARRETT MOTION TO CONFIRM PLAN
BB-1 Bonnie Baker 3-12-18 [21]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by Wells Fargo Bank, N.A., Chapter 13 Trustee, and HSBC Bank, National Association.

The court's decision is give the Debtor an opportunity to convert this Chapter 13 case to a Chapter 7 or Chapter 11 case. If this case is not converted by **May 15, 2018**, it will dismissed. Because this case will either be converted or dismissed: (1) confirmation of the Plan is denied as moot; and (2) all objections to confirmation of the Plan are overruled as moot.

Presently before the court is a Motion to Confirm Chapter 13 Plan filed on March 12, 2018, by Debtor Dennis Garrett ("Debtor"). Dkts. 21-25. Debtor moves for confirmation of the Chapter 13 Plan ("Plan") which was also filed on March 12, 2018. Dkt. 19. Confirmation is opposed by: (1) Wells Fargo Bank, N.A., Dkt. 33; (2) the Chapter 13 Trustee ("Trustee"), Dkt. 35; and (3) HSBC Bank USA, N.A., Dkt. 42. For purposes of this decision, the court notes that Wells Fargo makes a good faith objection and the Trustee raises an eligibility objection.

For the reasons explained below, the court's decision is to order this Chapter 13 case dismissed absent a conversion by the Debtor to a Chapter 7 or Chapter 11 case based on the Debtor's ineligibility to be a Chapter 13 debtor under 11 U.S.C. § 109(e).

Background

Debtor filed a Chapter 13 petition on February 12, 2018. Dkt 1. Schedules were filed on March 12, 2018. Dkt. 18.

Schedule E/F lists $55,365.00 in unsecured priority claims and $386,575.00 in unsecured nonprority claims which total $441,940.00 in unsecured claims.[1] Dkt. 18. Of that total amount $301,000.00 is listed as disputed, *i.e*, Schedule E/F at 4.4 ($99,500.00), 4.7 ($188,000.00), and 4.8 ($13,500.00). None of the "Contingent" or "Unliquidated" boxes for any of the unsecured debts listed on Schedule E/F are marked.

Discussion

"The bankruptcy court has the inherent power to sua sponte dismiss a case if the debtor is not eligible for relief." *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 917 (9th Cir. BAP 2006).

Chapter 13 eligibility is determined by § 109(e) of the Bankruptcy Code which states that "[o]nly an individual . . . that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than [$394,725.00] . . . may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e).[2] Eligibility is normally determined as of the petition date by a review of a debtor's originally-filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001).

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[1]The amount in the Plan is $535,571.17 consisting of $327,043.18 in unsecured priority claims and $208,527.99 in unsecured nonpriority claims. Dkt. 19.

[2]Pursuant to § 104(a), the § 109(e) dollar amounts are adjusted every three years with reference to the Consumer Price Index for All Urban Consumers, published by the Department of Labor. This dollar amount was in effect as of the petition date in this case.

However, if a bad-faith objection is raised by a party in interest, the bankruptcy court may look past the schedules so long as the debt computation for eligibility purposes is determined as of the petition date. *Guastella*, 341 B.R. at 918. Eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

The Schedules here list noncontingent, liquidated, unsecured debts totaling $441,940.00. That exceeds the § 109(e) statutory cap by $47,215.00 ($441,940.00 - $394,725.00). The court recognizes that the total noncontingent, liquidated, unsecured debts include several disputed debts. Nevertheless, disputed debts count in the eligibility analysis. *Nicholes v. Johnny Appleseed of Wash. (In re Nicholes)*, 184 B.R. 82, 90-91 (9th Cir. BAP 1995); *see also In re Mendenhall*, 2017 WL 4684999, *2 (Bankr. D. Idaho 2017) (mere fact that debt disputed insufficient to exclude it from the § 109(e) debt limit calculation).

Inasmuch as the Debtor's noncontingent, liquidated, unsecured debts exceed the statutory cap of § 109(e), the Debtor is ineligible to be a Chapter 13 debtor.[3] That said, the court will give the Debtor an opportunity to convert this Chapter 13 case to a Chapter 7 or Chapter 11 case. If this case is not converted by **May 15, 2018**, it will dismissed. And because this case will either be converted or dismissed: (1) confirmation of the Plan is denied as moot; and (2) all objections to confirmation of the Plan are overruled as moot.

The court will enter an appropriate minute order.

[3]Although the court is not ruling on the issue of good faith, Wells Fargo has filed a good faith objection to confirmation. Therefore, in making the § 109(e) eligibility determination the court could consider the amount of noncontingent, liquidated, unsecured debt stated in the Plan. *In re Cox*, 2016 WL 5854214, * 1 (Bankr. E.D. Wash. 2016) (looking beyond schedules to determine eligibility based on bad faith objection to confirmation); *Soderlund*, 236 B.R. at 273. Doing so results in noncontingent, liquidated, unsecured debts that exceed the § 109(e) statutory cap by $140,846.17 ($535,571.17 - $394,725.00).

18. 16-28075-B-13 DENISE BATTS
PGM-3 Peter G. Macaluso

MOTION TO AVOID LIEN OF DISCOVER BANK
3-29-18 [49]

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of Discover Bank ("Creditor") against the Debtor's property commonly known as 26 Marilyn Circle, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,087.33. An abstract of judgment was recorded with Sacramento County on November 2, 2010, which encumbers the Property. All other liens recorded against the Property total $229,199.70.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $262,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100,000.00 on Schedule C.

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

The court will enter an appropriate minute order.

19. 18-21377-B-13 SDB-1 **Thru #20**
BRIAN/KIMBERLY WATKINS
W. Scott de Bie
MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
3-19-18 [9]

Final Ruling: No appearance at the May 1, 2018, hearing is required.

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

The court's decision is to value the secured claim of Travis Credit Union at $38,870.00.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor Brian Watkin's declaration. Debtors are the owner of a 2015 Ram 3500 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $38,870.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Travis Credit Union 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 in August 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $44,343.96. 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 $38,870.00. *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.

20. 18-21377-B-13 SDB-2
BRIAN/KIMBERLY WATKINS
W. Scott de Bie
MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
3-19-18 [15]

Final Ruling: No appearance at the May 1, 2018, hearing is required.

Debtor's [sic] Motion for Order Valuing Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the

defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Travis Credit Union at $25,617.00.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor Brian Watkin's declaration. Debtors are the owner of a 2015 Jeep Grand Cherokee ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $25,617.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Travis Credit Union 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 in August 2015, which is more than 910 days prior to the filing of the petition, and refinanced in April 2017, which makes the interest of the Creditor a non-purchase money lien. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 $25,617.00. *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.

21.	13-34188-B-13 JPJ-3	HENRY/HAZEL CASTILLO Matthew J. DeCaminada	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS INC./DEPARTMENT OF EDUCATION, CLAIM NUMBER 7 3-15-18 [79]

Final Ruling: No appearance at the May 1, 2018, 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. 7 of Navient Solutions Inc/Department of Education and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions Inc/Department of Education ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $14,735.18. 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 was March 12, 2014, and for a government unit was May 5, 2014. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed May 10, 2014.

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 fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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 will enter an appropriate minute order.

22. 18-21193-B-13 FERNANDO ROJAS
JPJ-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-12-18 [25]

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

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

The plan cannot be assessed for feasibility. The Debtor has listed a DSO claim for Sacramento County DA Child Support Enforcement. The Debtor relies on 11 U.S.C. § 1322(a)(4) to state that the claim does not need to be paid in full in order to complete the plan so long as he pays all of his disposable income over the duration of the plan. However, without a proof of claim asserting that this is actually a § 507(a)(1)(B) claim or that the creditor assents to this treatment, the Trustee cannot ascertain whether this is the proper treatment for the claim. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Although the Debtor filed a response, it does not appear that the Trustee or any other parties had notice since no proof of service was filed with the court.

The plan filed March 1, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

23. 18-21293-B-13 ASHISH ARYA
AP-1 Pro Se
Thru #24

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK TRUST COMPANY AMERICAS
4-6-18 [19]

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

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

Objecting creditor Deutsche Bank Trust Company Americas holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $6,148.90 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 7, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

24. 18-21293-B-13 ASHISH ARYA
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-11-18 [22]

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

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

First, the Debtor did not appear at the meeting of creditors set for April 5, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Third, the Debtor has claimed an interest in real property, vehicles, and personal items as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Fourth, the Debtor has not provided the Trustee with requested copies of certain items related to business Ashish Arya Dentist Whitney Oaks Dental including, but not limited to, a completed business examination checklist, income tax returns for the two-year

period prior to the filing of the petition, bank account statements for the six-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, according to Schedule I, the Debtor's net income from rental property and/or operation of a business is $15,000.00. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses. The plan cannot be fully assessed for feasibility.

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $805,000.00. The total amount that will be paid to unsecured creditors is only $30,000.00

The plan filed March 7, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

25. 17-26694-B-13 TAMARA GEREN MOTION TO CONFIRM PLAN
PLC-4 Peter L. Cianchetta 3-14-18 [54]

Tentative Ruling: The Motion to [Confirm] Chapter 13 Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Trustee objects to the addition of post-petition arrears for Select Portfolio Servicing at Class 1 because the arrears no longer exist. The Debtor filed a response stating that it will strike this debt in the order confirming.

Second, the plan payment of $1,801.00 for months 7-10 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, and monthly dividends payable on account of Class 1 arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,977.00. The Trustee does not oppose the Debtor increasing her plan payment to $1,977.00 for months 7-10 in the order confirming. The Debtor filed a response stating that it increase the plan payment accordingly in the order confirming.

Third, based on the claims filed to date, the Debtor's amended plan will pay a 100% dividend to the Class 7 creditors in a period of 45 months. Additionally, the time has elapsed in which all creditors can timely file a claim. Therefore, the Trustee requests that the amended plan, which currently proposes to pay a 0% dividend to Class 7 creditors, be increased to 100%. The Debtor filed a response stating that it increase the dividend to Class 7 creditors accordingly in the order confirming.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

26. 18-21994-B-13 ALVIN CATLIN MOTION TO EXTEND AUTOMATIC STAY
LBG-1 Lucas B. Garcia 4-16-18 [12]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 22, 2018, due to delinquency in plan payments (case no. 16-22331, dkt. 57). 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 the previous case failed because he had a recurrence of cancer that left him out of work. Debtor states that he tried to have his attorney modify his plan, but confirmation of the plan was denied and his case was subsequently dismissed for failure to fulfill his duties in bankruptcy, which included bringing current plan payments. However, the Debtor does not explain any changed circumstances so that the present plan is likely to succeed.

Therefore, the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

27. 17-25899-B-13 CARLOS/ROBIN ROBLES MOTION TO CONFIRM PLAN
CYB-6 Candace Y. Brooks 3-9-18 [103]

Final Ruling: No appearance at the May 1, 2018, hearing is required.

The Motion for Confirmation of Debtors' First Amended Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the 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 March 9, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.