

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 2, 2017 at 1:00 p.m.

1. [17-20400](#)-B-13 LANELLE ROGERS MOTION TO CONFIRM PLAN
SDH-2 Scott D. Hughes 3-13-17 [[27](#)]

Final Ruling: No appearance at the May 2, 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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 13, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

May 2, 2017 at 1:00 p.m.

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2. [17-21307](#)-B-13 JOHN LOCKSTROM
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-13-17 [[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.

The Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed February 28, 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.

3. [17-21213](#)-B-13 MORGAN PROVIDENCE OBJECTION TO CONFIRMATION OF
JPJ-1 Mikalah R. Liviakis PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-13-17 [[17](#)]

CONTINUED TO 5/09/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO
VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC., AN ILLINOIS CORPORATION
D.B.A. CHRYSLER CAPITAL.

Final Ruling: No appearance at the May 2, 2017, hearing is required. The court will
enter an appropriate minute order.

4. [12-25415](#)-B-13 FRANK/SHIRLEY RUSSELL
GMW-2 G. Michael Williams

MOTION FOR SUBSTITUTION OF
REPRESENTATIVE FOR DEBTOR
AND/OR MOTION FOR CONTINUED
ADMINISTRATION OF CHAPTER 13
CASE , MOTION FOR WAIVER OF
CERTIFICATION REQUIREMENTS FOR
ENTRY OF DISCHARGE
4-17-17 [[44](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for (1) Substitution of Representative for Debtor; (2) Continued Administration of Chapter 13 Case; and (3) Waiver of the Certification Requirements for Entry of a 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 the surviving Joint Debtor, 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.

Joint Debtor gives notice of death of her husband and Debtor Frank A. Russell and requests the court substitute herself, Shirley M. Russell, 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, Joint Debtor has submitted as an exhibit a certificate of death for Francis A. Russell. Dkt. 47, Exh. A. The certificate of death does not state any alternative names such as "Frank," the name of the Debtor in this pending bankruptcy. A review of the petition shows that Debtor Frank A. Russell did not go by any other name in the 8 years prior to filing the petition on March 20, 2012. However, the court takes judicial notice that the middle initial and last name of the decedent matches that of the Debtor. Additionally, the certificate of death lists Shirley Russell as wife of the decedent and her mailing address as 179 Oxbow Marina Drive, Isleton, California. This is the same name as the Joint Debtor and same address associated with the Debtor and Joint Debtor.

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 court grants the motion.

The court will enter an appropriate minute order.

5. [13-27721](#)-B-13 KEVIN/KRISTIN HIGHBAUGH MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab 3-15-17 [[65](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

The Motion Modify 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 March 15, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

6. [17-21038](#)-B-13 ANTHONY/RENEE TOKUNO MOTION TO VALUE COLLATERAL OF
DJC-1 Diana J. Cavanaugh PERITUS PORTFOLIO SERVICES/NCEP
Thru #7 3-30-17 [[18](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

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

The court's decision is to value the secured claim of Peritus Portfolio Services/NCEP at \$5,000.00.

Debtors' motion to value the secured claim of Peritus Portfolio Services/NCEP ("Creditor") is accompanied by Debtor Anthony Tokuno's declaration. Debtors are the owners of a 2006 Nissan Maxima ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$5,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Peritus Portfolio Services/NCEP 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 April 4, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,512.31. 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 \$5,000.00. *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.

7. [17-21038](#)-B-13 ANTHONY/RENEE TOKUNO OBJECTION TO CONFIRMATION OF
JPJ-1 Diana J. Cavanaugh PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-13-17 [[23](#)]

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). 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, feasibility depends on the granting of a motion to value collateral for Peritus Portfolio Services. That motion was granted at Item #6.

Second, the Debtors have failed to provide the Trustee with requested copies of certain items related to Debtors' business Family Tree Caregiving including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtors have failed to comply with 11 U.S.C. § 521.

Third, the plan payments in the amounts of \$3,100.00 x 2 months; \$3,290.00 x 12 months; and \$3,440.00 x 46 months do 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 these monthly amounts plus the Trustee's fee is \$3,697.20 March 2017 through May 2017; \$4,083.39 June 2017 through May 2018; and \$4,383.69 June 18 through end of the plan. The plan does not comply with Section 4.02 of the mandatory form plan.

For the second and third reasons stated above, the plan filed March 7, 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

8. [17-20341](#)-B-13 LORENA MONTESINOS
JPJ-1 Aubrey L. Jacobsen

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
3-9-17 [[19](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally 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 by the Debtor was filed to the objection.

The plan filed February 2, 2017, will be confirmed and motion to dismiss denied provided all plan payments are current at the time of the hearing.

This matter was originally continued from April 4, 2017, to April 18, 2017, to be heard in conjunction with the motion to value collateral of AFS Acceptance. The Trustee's sole objection to confirmation was that feasibility of the plan depends on the granting of the motion to value collateral of AFS Acceptance. The motion to value was granted on April 18, 2017.

However, this matter was again continued from April 18, 2017, when it was learned at the hearing that the Debtor was delinquent in plan payments. The court permitted a continuance of the confirmation hearing to May 2, 2017, to provide the Debtor additional time to become current on plan payments.

Provided the Debtor is current with plan payments at the time of the hearing, there being no other objection the plan filed February 2, 2017, will be confirmed. However, if the Debtor is not current at the time of the hearing confirmation will be denied.

Tentative Ruling: The Motion to Confirm Debtors' Second amended Plan Filed on March 21, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to determine the matter at the scheduled hearing.

The Trustee objects to confirmation of the plan on the ground that Debtors have not filed their plan in good faith since they are not making their best efforts to repay their creditors pursuant to 11 U.S.C. § 1325(a)(3). The Trustee asserts that based on the filed and allowed claims, the unsecured non-priority creditors total \$53,771.50 and that Debtors' second amended plan must pay all filed and allowed creditors in full. According to the Trustee, the Debtors are proposing a 20% plan while attempting to pay themselves approximately \$4,685.86 per month in voluntary retirement withholdings. Voluntary retirement withholdings are an impermissible deduction from the Debtors' budget.

The Debtors have filed a response acknowledging that payments totaling \$53,771.50 are required to satisfy a 100% plan. Debtors state that they will file an amended Schedule I and amended Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Form 122C-1) before the date of the hearing on this matter. This would require the filing of an amended Chapter 13 Calculation of Your Disposable Income (Form 122C-2).

10. [17-21446](#)-B-13 SHARISE ALLEN
AP-1 Chad M. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
4-13-17 [[14](#)]

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.

Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$43,362.37 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 6, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 2, 2017, hearing is required.

The Motion to Confirm the Second Modified 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 second 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 14, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

12. [16-27856](#)-B-13 BENJAMIN/JULIA ARREGUY MOTION TO CONFIRM PLAN
ADR-3 Justin K. Kuney 3-14-17 [[41](#)]
Thru #13

Final Ruling: No appearance at the May 2, 2017, hearing is required.

Debtors' 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 March 14, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. [16-27856](#)-B-13 BENJAMIN/JULIA ARREGUY CONTINUED MOTION TO CONVERT
JPJ-2 Justin K. Kuney CASE FROM CHAPTER 13 TO CHAPTER
7 AND/OR MOTION TO DISMISS CASE
3-1-17 [[29](#)]

Tentative Ruling: This matter was continued from April 4, 2017, in order to be heard in conjunction with Debtors' Motion to Confirm First Amended Chapter 13 Plan. The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was originally 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 was filed.

The motion to confirm the first amended plan having been granted at Item #12, the court's decision is to not convert this Chapter 13 case to a Chapter 7.

The court will enter an appropriate minute order.

14. [11-24658](#)-B-13 STEVEN/LYNN BOCCA
BLG-6 Chad M. Johnson

MOTION TO AVOID LIEN OF HUNTER
DOUGLAS FABRICATION
3-28-17 [[146](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

The Motion to Avoid Lien on Judgment Creditor Hunter Douglas Fabrication, A Corporation dba Bytheway's Manufacturing 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Hunter Douglas Fabrication, A Corporation dba Bytheway's Manufacturing ("Creditor") against the Debtors' property commonly known as 619 Hillsdale Court, Fairfield, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$41,511.89. An abstract of judgment was recorded with Solano County on April 23, 2010, which encumbers the Property. All other liens recorded against the Property total \$381,762.93.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$255,000.00 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 \$1.00 on amended Schedule C filed March 29, 2017. Dkt. 151.

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 Debtors' 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.

15. [11-28259](#)-B-13 BILLY/REBECCA BIRDSONG MOTION TO AVOID LIEN OF
SDB-4 W. Scott de Bie CITIBANK (SOUTH DAKOTA) N.A.
3-23-17 [[90](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

Debtors' Motion to Avoid Judicial Lien that Impairs Exemption 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against the Debtors' property commonly known as 995 Orchard Drive, Dixon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,188.21. An abstract of judgment was recorded with Solano County on October 8, 2010, which encumbers the Property. All other liens recorded against the Property total \$197,148.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$190,700.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100.00 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 Debtors' 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.

16. [17-20566](#)-B-13 GREGORY HETRICK
SDH-2 Scott D. Hughes

MOTION TO CONFIRM PLAN
3-14-17 [[34](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

The Motion to Confirm First Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 14, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

17. [17-20969](#)-B-13 ALPHONSO BARBER
JPJ-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-13-17 [[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).

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 Debtor filed an amended plan on April 24, 2017. The confirmation hearing for the amended plan is scheduled for June 6, 2017. The earlier plan filed February 16, 2017, is not confirmed.

The court will enter an appropriate minute order.

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 the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 4, 2017 (case no. 16-24396, dkt. 103, 109). 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 was filed in order to save his home by curing the mortgage arrears, pay the mortgage through the plan, pay the outstanding taxes due to Internal Revenue Service and the California Franchise Tax Board, and to pay 100% to general unsecured creditors. The Debtor asserts that his circumstances have changed from the last case because his online retail business selling used and up-cycled furniture and sundries is now over one year old, is more established, and income is consistent each month, and because his handyman work is becoming more plentiful now that the weather is improving. However, the Debtor reported nearly identical income (as well as the same questionable expenses) in his most recent dismissed chapter 13 case as he does in this case and was in substantial default under his prior plan at the former income level. Compare case no. 16-24396 at dkt. 103 with case no. 17-22283 at dkt. 15.

Debtor also asserts that despite filing pro se, he is now more knowledgeable about the Chapter 13 bankruptcy process after attending separate hearings on the Trustee's motion to dismiss and the Trustee's objections to Debtor's Chapter 13 plan. The court does not find these latter statements credible. Inasmuch as this is the Debtor's fourth chapter 13 case (the others being 16-24396, 10-21180, 09-42279) the Debtor should be intimately familiar with the chapter 13 process.

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 and the automatic stay is not extended.

The court will enter an appropriate minute order.

19. [17-21287](#)-B-13 PAUL/REGINA HOBIE
JPJ-1 Michael David Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-13-17 [[13](#)]

Tentative Ruling: The 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). 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 Debtors projected disposable income is not being applied to make any payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) line #45 should be \$390.74 for 60 months, which totals \$24,444.00 owed to unsecured creditors. Line #23 includes an impermissible expense for optional telephone and telephone services in the amount of \$587.00. Additionally, the Debtors have failed to amend Schedule I and Form 122-C to add the \$500.00 per month income from Natomas School District. The proposed plan does not provide any dividend to unsecured creditors. The Debtors have not carried their burden that the plan complies with 11 U.S.C. § 1325(a)(6) and § 1325(b)(1)(B).

The plan filed February 28, 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property) 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 grant the motion for relief from stay.

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7215 Eagle Road, Fair Oaks, California (the "Property"). Movant has provided the Declaration of Lisa Lubbers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Lubbers Declaration states that there are post-petition defaults for the months of February 1, 2017, through March 1, 2017. Movant has submitted a post-petition payment history setting forth Debtor's post-petition payments. Dkt. 48, Exh. 5. The post-petition payment history reflects that although payments were made by the Debtor on February 1, 2017, and March 2, 2017, those payments were applied to months November 2016 through January 2017.

The Debtor has filed an opposition stating that she made two payments to Movant for the months of February 2017 and March 2017. Debtor asserts that during the last six months, she has paid Movant approximately \$14,267.00.

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 \$355,601.85 (including \$298,307.85 secured by Movant's first deed of trust) as supported by Movant's motion and Schedule D filed by the Debtor. The value of the Property is determined to be \$197,000.00 as stated in Schedules A and D filed by Debtor.

The court also notes that the Debtor's plan confirmed on or about November 7, 2012, classifies Movant's claim as a Class 4 secured claim to be paid directly by the Debtor.

Discussion

Since Movant's secured claim is classified as a Class 4 secured claim in the Debtor's confirmed chapter 13 plan, confirmation modified all bankruptcy stays to allow Movant to exercise its rights against its collateral and any nondebtor. Therefore, as to the collateral and Movant's right to exercise its rights under applicable nonbankruptcy law, including its right to foreclose based on the Debtor's default, there is no stay in effect. See 11 U.S.C. § 362(j).

Further, 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). Although the Debtor did make payments in February 2017 and March 2017, the evidence presented shows that those payments were applied to months November 2016 through January 2017. Thus, the Debtor remains in default for months February 2017 and March 2017. And in the absence of equity in the property, Movant is not adequately protected. Therefore, even if the automatic stay was not already terminated by and upon confirmation, Movant has

stated cause under 11 U.S.C. § 362(d) (1) .

The court shall issue an order confirming that all bankruptcy stays are terminated 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 to otherwise exercise their state law and contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

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.

21. [16-25492](#)-B-13 JAMES STRAIN
MJD-2 Scott J. Sagaria

MOTION TO MODIFY PLAN
3-23-17 [[45](#)]

Final Ruling: No appearance at the May 2, 2017, hearing is required.

Debtor's Motion to Modify Chapter 13 Plan After Confirmation 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 second 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 23, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

22. [17-20993](#)-B-13 EVAN/CELESTE NEISER
PA-2 Mikalah R. Liviakis
OBJECTION TO CONFIRMATION OF
PLAN BY THERESE REESE
4-13-17 [[28](#)]

Final Ruling: Continued by stipulation to June 13, 2017, at 1:00 p.m. No appearance at the hearing on May 2, 2017, is required.

23. [17-21397](#)-B-13 STEPHEN/BRENDA VICE
DCN-5 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
4-13-17 [[22](#)]

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

The court's decision is to overrule the objection and confirm the plan.

Bank of America, N.A. holds a deed of trust secured by the Debtors' residence. The creditor asserts \$25,891.03 in pre-petition arrearages but has not yet filed a proof of claim. Additionally, the creditor provides no evidence to support the amount of claimed pre-petition arrears. Nor has the creditor provided a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed March 3, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

24. [17-20699](#)-B-13 JOHN MEHL
JM-2 Pro Se

MOTION TO CONFIRM PLAN
3-2-17 [[21](#)]

Final Ruling: Motion is denied as moot. This case was dismissed on April 27, 2017. No appearance at the May 2, 2017, hearing is required.

The court will enter an appropriate minute order.