**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

**May 15, 2018 at 1:00 p.m.**

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| 1. | 17-25204-B-13<br>BLG-3 | PAMELA JOHNSON<br>Chad M. Johnson | MOTION TO MODIFY PLAN<br>4-10-18 [31] |

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Motion to Confirm Second Modified Plan Filed on April 10, 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 April 10, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

2. 18-20909-B-13 YVONNE WRIGHT MOTION TO CONFIRM PLAN
RK-1 Richard Kwun 4-2-18 [23]

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

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 Debtor has filed a response conceding that the rate of payment for attorney's fees was absent. Counsel states that the rate can be provided for in the order confirming and reviewed by the Trustee for appropriateness. However, the Debtor does not state what that rate is to be.

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

The court will enter an appropriate minute order.

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| 3. | 18-21512-B-13<br>JPJ-1 | DENNIS/ROBIN COBB<br>Mary Ellen Terranella | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE<br>4-24-18 [17] |

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed March 15, 2018, will be confirmed.

The court will enter an appropriate minute order.

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| 4. | 18-21413-B-13<br>JPJ-1 | MOMOLILAAUFOGAA/LIU LOLANI<br>Pauldeep Bains | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE<br>4-24-18 [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 overrule the objection, deny the motion to dismiss, and confirm the plan.

Feasibility depends on the granting of motions to value collateral for OneMain Financial, PSB-1, for a 2013 Chevy Malibu and OneMain Financial, PSB-2, for a 2006 Chevy Trailblazer. Those motions to value were heard and granted on May 8, 2018.

The plan filed March 12, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

The court will enter an appropriate minute order.

5. 14-29215-B-13 JEFFERY/SANDRA THOMAS
MET-4 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS' ATTORNEY
4-16-18 [121]

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Application for Additional Attorney's Fees 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 compensation.

**REQUEST FOR ADDITIONAL FEES AND COSTS**

As part of confirmation of the Debtors' Chapter 13 plan, Mary Ellen Terranella ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 79. Applicant now seeks additional compensation in the amount of $5,070.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 124.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors incomes would change significantly prompting the Chapter 13 Trustee to file a motion demanding the plan payment be increased. Applicant states that she performed 15.60 hours of unanticipated work billed at $325.00 per hour and which spanned between May 30, 2017, through August 30, 2017. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

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

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| Additional Fees | $5,070.00 |
| Additional Costs and Expenses | $ 0.00 |

The court will enter an appropriate minute order.

6. 17-27916-B-13 JPJ-2 — SHANNON LAWRENCE, Matthew J. DeCaminada — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE, 4-10-18 [40]

**Tentative Ruling:** The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee moves to convert, or in the alternative dismiss the case, on grounds that the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 13087(c)(1). The Debtor's motion to confirm amended plan was heard and denied on February 20, 2018.

Debtor has filed a response stating that on April 27, 2018, she filed and served a second amended plan and motion to confirm. The hearing date on the motion is set for June 5, 2018, at 1:00 p.m.

**Discussion**

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

The Bankruptcy Code Provides:

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

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

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed a second amended plan. The motion is denied without prejudice and the case is not converted nor dismissed.

The court will enter an appropriate minute order.

7. 18-21221-B-13 JPJ-1 **Thru #9**
JEFFREY/LORNA FUKUSHIMA
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-12-18 [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 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). 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.

Feasibility depends on the granting of motions to value collateral for Internal Revenue Service and Franchise Tax Board. Those motions to value are denied at Items #8 and #9.

While the Trustee also raises that feasibility depends on the granting of a motion to value collateral for FIA Card Services, the Debtors filed a response stating that they had incorrectly provided for the creditor as a Class 2C claim when it should have been provided for as a Class 7 general unsecured claim. The Debtors state that they can provide for this change in an order confirming.

Nonetheless, because the motions to value collateral for Internal Revenue Service and Franchise Tax Board are denied, the plan filed March 2, 2018, is not feasible and 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

8. 18-21221-B-13 PGM-1
JEFFREY/LORNA FUKUSHIMA
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
4-13-18 [17]

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Motion to Value Collateral of the Internal Revenue Service 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 deny the motion to value collateral without prejudice.

Debtors' motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the following personal property: 2001 Chevrolet Camaro, 2000 Dodge truck, 1999 Honda Accord, 1960 Hawaiian Powercat, furniture, appliances, electronic equipment, kitchen items, knick-knacks, outdoor items, pictures, books, clothing, costume jewelry, valuable jewelry, cash, Golden 1 checking account (collectively "Personal Property"). The Debtors seek to value the Personal Property at a replacement value of $8,978.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 6-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

**Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the lien of Internal Revenue Service is $26,406.87 as stated in Claim No. 6-1. Of this amount, $11,445.36 is secured claims and $3,718.40 is unsecured priority claims. Debtors assert that the price a retail merchant would charge for the Personal Property is $8,978.00.

The court finds issue with Debtors' replacement value of the Personal Property. Debtors state in their motion and declaration that the replacement value is $8,978.00. This differs from the valuation provided in Schedule A/B, Line 62, that lists the total personal property at $9,880.00. And this differs from the replacement value stated in the declaration supporting Item #9, which states a valuation of $9,071.00 for the same Personal Property. *See* dkt. 24. Due to these inconsistencies, the court does not find Debtors' valuation to be credible.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

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| 9. | 18-21221-B-13<br>PGM-2 | JEFFREY/LORNA FUKUSHIMA<br>Peter G. Macaluso | MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD<br>4-13-18 [22] |

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Motion to Value Collateral of the Internal Revenue Service 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 deny the motion to value collateral without prejudice.

Debtors' motion to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the following personal property: 2001 Chevrolet Camaro, 2000 Dodge truck, 1999 Honda Accord, 1960 Hawaiian Powercat, furniture, appliances, electronic equipment, kitchen items, knick-knacks, outdoor items, pictures, books, clothing, costume jewelry, valuable jewelry, cash, Golden 1 checking account (collectively "Personal Property"). The Debtors seek to value the Personal Property at a replacement value of $9,071.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

**Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the lien of Franchise Tax Board is $8,087.00 according to Debtors' motion. Debtors assert that the price a retail merchant would charge for the Personal Property is $9,071.00.

The court finds issue with Debtors' replacement value of the Personal Property. Debtors state in their declaration that the replacement value is $9,071.00. This differs from the valuation provided in Schedule A/B, Line 62, that lists the total personal property at $9,880.00. And this differs from the replacement value stated in the declaration supporting Item #8, which states a valuation of $8,978.00 for the same Personal Property. *See* dkt. 19. Due to these inconsistencies, the court does not find Debtors' valuation to be credible.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

10. 18-20028-B-13 DONALD RIDDLE
JPJ-1 George T. Burke

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-21-18 [19]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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).

The court's decision is to sustain the objection.

This matter was continued from March 13, 2018, in order for Debtor to provide terms of the refinance of his mother's real property and on condition that Debtor stays current on the March 2018 and April 2018 plan payments. If the Debtor failed to make plan payments, the Trustee was permitted to file an ex parte notice and order of nonpayment and the Trustee's objection to confirmation of the plan would be sustained.

Debtor's supplemental evidence was to be filed by May 1, 2018, and Trustee's response, if any, was to be filed by May 8, 2018. Debtor filed a supplemental response on May 1, 2018, and Trustee did not file any response.

Debtor states in his supplemental response that he has been unable to obtain a loan commitment to refinance the reverse mortgage encumbering the inherited house because banks and credit unions contacted by Debtor would not consider a loan while he is in bankruptcy. The Debtor reports that he has an appointment with a mortgage broker for a hard money bridge loan. He further states that the reverse mortgage company withdrew its objection to his proposed plan and he asserts that the reverse mortgage company enjoys adequate protection in the form of plan payments and substantial equity cushion. Debtor states that he is current on plan payments.

Given the state of Debtor's affairs, Debtor requests a continuance to obtain a refinance commitment on the subject property and that the court require Debtor hire probate counsel to expedite the probate process since it appears further legal steps will be necessary to administer Debtor's mother's estate. Alternatively, if a continuance is not allowed, Debtor requests an opportunity to submit an amended plan.

The court's decision is to deny Debtor's requested continuance and sustain the Trustee's objection to confirmation since there is no pending loan modification.

Furthermore, 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. 15-28829-B-13 WAGMA SAFI MOTION TO MODIFY PLAN
MLA-7 Mitchell Abdallah 4-3-18 [145]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,076.95 through April 2018. The Debtor has failed to make a plan payment to the Trustee since November 7, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor failed to utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 plan effective December 1, 2017.

Although the Debtor's failure to make plan payments since November 7, 2017, is cause and unreasonable delay by the Debtor prejudicial to creditors under 11 U.S.C. § 1307(c)(1), both of which support conversion or dismissal, and although the court is inclined to dismiss this case as in the best interest of creditors based on the Debtor's failure to make plan payments for the past five months, the court will allow Debtor one final opportunity to confirm a modified plan. Therefore, the Debtor shall confirm a modified plan within 60 days absent which this case may be dismissed on the Trustee's ex parte application.

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

The court will enter an appropriate minute order.

12. 15-29529-B-13 JPJ-1 — JEFFREY/JULIE ROGERS — Gerald B. Glazer — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE — 3-30-18 [22]

**Tentative Ruling:** The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not convert this Chapter 13 case to a Chapter 7 provided that the Debtors are current on plan payments.

Trustee seeks dismissal of the case on the basis that Debtors are $6,468.00 delinquent in plan payments, which represents 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of $3471.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtors have filed a response stating that they have cured the $6,468.00 delinquency. Debtors further state that they have paid $2,000.00 toward their April 2018 payment and that the balance will be paid prior to the hearing on this motion.

**Discussion**

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

The Bankruptcy Code Provides:

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

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

Provided that the Debtors are current on plan payments, cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c). The motion will be denied without prejudice and the case will not be converted or dismissed.

Nevertheless, even if the Debtors are current on plan payments at the time of the hearing, based on their payment history (or lack of consistency thereof), the court will require the Debtors to make timely plan payments for the next six (6) months beginning with the payment due for May 2018. If the Debtors fail to make any timely plan payment during that six-month period, this case may be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

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

CONTINUED MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO IMPOSE AUTOMATIC STAY
4-5-18 [8]

**Tentative Ruling:** This matter was continued from May 1, 2018, to allow the Debtor additional time to file additional declarations in support of its motion to impose the automatic stay.

The court's decision is to deny 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 asserts 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.

In the Debtor's declaration filed May 8, 2018 (dkt. 19), Debtor acknowledges that she fell behind on plan payments in the previous two cases. As to the 2016 dismissed case, Debtor states that she fell behind on payments because she did not remember that plan payments went into effect immediately and she did not know that her attorney could change the plan so that she could catch up on payments. As to the 2017 dismissed case, Debtor states that she was not emotionally or financially prepared for the fall out of her mother's passing and did not handle her affairs well by the end of the year.

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 still provides no evidence of this other than hearsay evidence in her declaration. As the court raised at the pervious hearing, the Debtor has 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. The Debtor does not explain why a declaration from her brother cannot be obtained.

While the court finds credible Debtor's assertions that the stresses of her mother's passing are over and will not hinder her in performing her obligations as a debtor, the Debtor still has not offered sufficient explanation from which the court can conclude that her financial circumstances have changed aside from the hearsay evidence of what her brother stated she will receive. 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.

14. 17-22634-B-13 JPJ-1 — RANDY RICHARDSON AND JACQUELYN — W. Steven Shumway — MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE — 3-30-18 [86]

**Tentative Ruling:** The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue this motion to May 29, 2018, and to set a deadline for the Debtors to file, serve, and set for hearing a modified plan and motion to confirm it.

Trustee seeks conversion or dismissal of the case on the basis that Debtor is $15,480.00 delinquent in plan payments, which represents 4 plan payments. By the time this matter is heard, an additional plan payment in the amount of $3,856.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Since the total value of non-exempt equity in the estate is $41,818.00, as a result of the available equity in the Debtors' residence (minus 8% cost of sale) based on Schedules A/B and C filed April 20, 2017, conversion to a Chapter 7 proceeding rather than dismissal of the case is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

**Debtors' Response**

Debtors filed a response stating that they obtained a modification of their real estate secured loan with Selene Finance ("Selene") in late-March 2018. They are waiting for a signed copy to be returned by Selene in order to file a modified plan.

Under the terms of the modification, Selene has agreed to capitalize the delinquency and add it to the end of their loan. The balloon payment of $75,995.53 will not be due until January 1, 2048. Selene has also agreed to lower the Debtors' monthly payment from $1,352.00 to $1,105.67 per month.

According to the claims filed, Debtors owe $6,511.52 in priority claims (Franchise Tax Board) and $9,799.53 in unsecured claims for a total of $16,311.05. Debtors assert that they are able to handle payments to these creditors directly and would prefer dismissal of the case or a continuation of this motion in order for Debtors to file a modified plan. Debtors state that conversion to a Chapter 7 would force them to sell their home, move their farm and animals, and incur rental expense that exceeds the amount of the mortgage payment they currently make.

The Debtors shall file, serve, and set for hearing a modified plan and motion to confirm it by May 29, 2018, at 1:00 p.m. This matter is continued to May 29, 2018, at 1:00 p.m. If a modified plan and motion to confirm it are filed, served, and set by May 28, 2018, this matter will be further continued to the modified plan confirmation hearing date. If a modified plan and motion to confirm it are not filed by 1:00 p.m. on May 29, 2018, the motion to convert will be granted and the case converted to a Chapter 7 case.

The court will enter an appropriate minute order.

15. 18-20051-B-13 RORY MCNEIL
JPJ-1 Mark W. Briden

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-13-18 [19]

**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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 28, 2018. The confirmation hearing for the amended plan is scheduled for May 2,2 2018. The earlier plan filed January 4, 2018, is not confirmed.

The court will enter an appropriate minute order.

16. 18-20052-B-13 WANDA MOORE — MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso — 3-30-18 [57]
**Thru #17**

**Tentative Ruling:** The Motion to Confirm Debtor's First Amended Plan Filed on March 30, 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 not confirm the first amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,880.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Wells Fargo Bank NA in Class 1. The plan cannot be effectively administered. The Trustee is unable to fully comply with § 3.07(b) of the plan.

Third, the Debtor has not provided the Trustee with an appraisal or BPO to support her valuation of real property located at 8053 Dorian Way, Fair Oaks, California. The Trustee believes based on its initial investigation that the property could be worth as much as $387,000.00. Debtor values this property at $180,000.00. This objection was raised by the Trustee and sustained on March 6, 2018, and to date the Trustee still has not received the requested information. The Trustee cannot assess feasibility of the plan and whether the plan complies with 11 U.S.C. § 1325(a)(4). The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

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

The court will enter an appropriate minute order.

17. 18-20052-B-13 WANDA MOORE — COUNTER MOTION TO DISMISS CASE
PGM-3 Peter G. Macaluso — 5-1-18 [67]

**Tentative Ruling:** The motion will be conditionally denied.

Because the plan proposed by the Debtor 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.

18. 17-23654-B-13 SHARON OGBODO MOTION TO MODIFY PLAN
MJD-3 Matthew J. DeCaminada 4-4-18 [81]

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The 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)(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 April 4, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

19. 16-24559-B-13 STEVEN SIPE
LES-1 Lucas B. Garcia

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
4-17-18 [94]

JAMES CARTER VS.

**Tentative Ruling:** The Motion for Order Confirming No Stay in Effect, Alternatively for an Order 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 confirm the absence of an automatic stay, convert the Debtor's opposition to a motion for sanctions for violation of the automatic stay, and allow Debtor to file an amended stay violation motion and set the matter for an evidentiary hearing.

James A. Carter and Judith M. Cater, Trustees Revocable Trust Agreement of May 23, 1996 (collectively "Movant"), seeks relief from the automatic stay with respect to real property commonly known as 97000 Hillview Road, Newcastle, California (the "Property"). Movant has provided the Declaration of Lawrence E. Skidmore to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Skidmore Declaration states that Movant is the legal owner of the property. Movant had commenced an unlawful detainer action on April 13, 2016, in Placer County Superior Court prior to Debtor's filing of his first Chapter 13 Bankruptcy case on April 20, 2016, case no. 16-22518. That bankruptcy case was dismissed on May 23, 2016. On June 20, 2016, Movant obtained an unlawful detainer judgment for possession and damages and had a writ for possession issued. On June 28, 2016, the writ of possession was enforced by the Placer County Sheriff's Office and possession of the Property was restored to Movant.

Movant states that during Debtor's occupancy of the Property, Debtor accumulated a collection of personal property consisting of items such as wooden fruit containers, used bricks, old machinery, and vehicles including but not limited to a semi-tractor, cargo trailer, a conveyor system, a horse trailer or personnel transport, a recreational vehicle, a rusted asphalt truck, and a crane. Movant states that under the writ of possession, Debtor had 15 days or until July 13, 2016, to remove his personal property from the Property. Movant acknowledges that Debtor made some effort to remove his personal property but a substantial amount of the Debtor's personal property remains on the Property. Movant asserts that Debtor's failure to remove his personal property from Movant's Property has resulted in a storage charge of $151,240.32 through April 12, 2018, based on a storage charge of $0.04 square feet per day for use of 174,240 square feet (4 acres) or $232.32 per day for 651 days.

Movant asserts that since this bankruptcy case is Debtor's second bankruptcy filing within the last year, the automatic stay terminated 30 days after the filing of Debtor's second petition pursuant to 11 U.S.C. § 362(c)(3). Movant seeks relief from the automatic stay or, alternatively, confirmation that no automatic stay is in effect and a court order permitting it to dispose of any and all of Debtor's personal property in accordance with state law.

**Opposition by Debtor**

Debtor responds by stating that Movant has unclean hands because it converted truckloads of Debtor's exempted personal property by taking it to an undisclosed location without court permission and without any notification to or permission of the Debtor, and has arranged Debtor's remaining personal property in such a way to destroy some and make it impracticable to remove.

Furthermore, Debtor asserts that Movant has purposefully and unreasonably constrained every effort by the Debtor to work out an arrangement to acquire the personal property. Debtor states that there are barriers on the Property preventing him from removing his personal property. Debtor also disputes the storage fee and argues that there was never any agreement with respect to ongoing storage fees.

Debtor requests that the court deny Movant's motion or, in the alternative, requests an evidentiary hearing to allow more evidence to be presented on the disputed facts.

**Response by Movant**

Movant states that it made efforts to allow Debtor to remove his personal property but that Debtor acted with little diligence. Movant asserts that any effort made by Debtor to remove the personal property was limited to fruit trays. As to the storage fee, Movant contends that the fee is permitted not by any agreement signed by Debtor but under California Civil Code § 1900.

**Discussion**

Pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay ends 30 days after the filing of a debtor's second bankruptcy petition pending in the past 12 months.

On April 20, 2016, the Debtor filed a Chapter 13 petition (case no. 16-22518). That case was dismissed on May 23, 2016, for failure to timely file documents. Dkt 29. On July 13, 2016, the Debtor filed the present Chapter 13 case (case no. 16-24559).

The court has reviewed the docket and confirms that the prior case was pending within the previous year of the filing of the present case. Accordingly, the automatic stay ended for all purposes 30 days, or on August 12, 2016, after the filing of present case. *See* 11 U.S.C. § 362(j); 11 U.S.C. § 362(c)(2)(A). Accordingly, the motion is **granted only to the extent of the court's confirmation that there is no automatic stay in effect**. For the reasons explained below, the motion is **denied to the extent it requests relief under § 362(d)(1) and/or § 362(d)(2) and an order permitting the disposition of the Debtor's personal property**.

That there is no automatic stay in effect does not necessarily mean Movant may sell or otherwise dispose of the Debtor's personal property that remains on the Property in satisfaction of its prepetition judgment against the Debtor or otherwise. That issue is discussed below. But initially, the court notes that questions remain unanswered as to whether Movant took any action against the Debtor or his personal property after the second petition was filed on July 13, 2016, and prior to the expiration of the automatic stay on August 12, 2016, and thereby violated § 362(a) while the automatic stay remained in effect. Between those two dates the Debtor and his personal property - exempt and nonexempt - were property of the estate and as such both were protected by automatic stay. *In re Cohen*, 2016 WL 797656, *4 (Bankr. D. Ariz. 2016) ("The filing of a petition for relief establishes an estate encompassing all of the debtor's property and prompts an automatic stay on all acts against the debtor and his non-exempt property."); *see also Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713, 725 (9th Cir. B.A.P. 2012) (noting that even exempt property becomes property of the estate). To the extent Movant's actions during the above-referenced time period, *i.e.*, disposition or destruction (physical or economic) of the Debtor's personal property (exempt and nonexempt) and/or subjecting the Debtor's personal property to storage charges, violated the automatic stay of § 362(a) Movant may be liable to the Debtor for damages under § 362(k).[1]

Now to the Debtor's personal property - exempt and nonexempt. Movant appears to believe that the absence of an automatic stay means that Movant may sell or otherwise

[1]The court notes that just because the automatic stay ended, liability for violations that occurred while the stay was in effect does not. *See In re Sundquist*, 566 B.R. 563, 585-586 (Bankr. E.D. Cal. 2017), *vacated in part on other grounds*, 580 B.R. 536 (Bankr. E.D. Cal. 2018).

dispose of the Debtor's personal property with impunity. *See* Dkt 96 at ¶ 31. Not so. Even if the Debtor's personal property currently located on the Property is no longer protected by the automatic stay, it may nevertheless remain property of the estate. *Catalano v. CIR*, 279 F.3d 682, 687 (9th Cir. 2002); *see also In re Waltower*, 2012 WL 4758043, *1 (Bankr. S.D. Ga. 2012). And here it so remains.

The Debtor states that his personal property located on the Movant's Property is exempt property. In the absence of an objection, exempt property typically leaves the estate and revests in the debtor "30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b)(1); *see also Mwgwami v. Wells Fargo Bank, N.A.*, 764 F.3d 1168, 1177 (9th Cir. 2014) (explaining that funds claimed as exempt left estate after 30th day of exemption objection period expired without objection). Schedules in this case were filed on August 11, 2016 (dkt. 24), and the relevant ones, *i.e.*, Schedules B and C, were not amended. The § 341 meeting concluded on September 15, 2016. Based on the latter of those two dates, objections to the Debtor's claim of exemptions were due - and thus exempt property remained property of the estate until at least - October 17, 2016. But the circumstances of this case are not typical because certain actions by the Debtor resulted in all property remaining in the estate.

Very recently in *Lee v. Field (In re Lee)*, ___ F.3d ___, 2018 WL 2091237 (9th Cir. May 7, 2018), the Ninth Circuit held that a complaint filed in an adversary proceeding to recover a fraudulent transfer by the debtor doubled as a successful objection to the debtor's claim of exemption. In other words, the Ninth Circuit construed the adversary complaint according to the relief it sought and not the label placed on it. *See also U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) ("The moving party's label for its motion is not controlling. Rather, the court will construe it, however styled, to be the type proper for relief requested."); *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015) (stating that "the court must construe motions so as to provide just, speedy, and inexpensive determination of every case and proceeding" and may re-designate as necessary). That same principle applies here with regard to the Debtor's claim of exemption vis-a-vis the Debtor's amended plan.

The Debtor filed an amended plan on August 29, 2016. Dkt 37. Section 5.01 of that amended plan states that upon confirmation, property of the estate shall <u>not</u> revest in the Debtor. *Id.* The motion to confirm the amended plan was heard and granted on October 28, 2016. Dkt 80. The confirmation order was entered on November 16, 2016. Dkt. 81.

The amended plan effectively extended the time to object to the Debtor's claim of exemption from October 17, 2016, when property otherwise would have left the estate, through at least the confirmation hearing on October 25, 2016, and thereafter to the entry of the confirmation order on November 16, 2016. In other words, the amended plan extended the opportunity for parties in interest to address the same issue involved in the Debtor's claim of exemption, *i.e.*, whether the Debtor's personal property - exempt and nonexempt - should remain with or be removed from the estate. The extension from October 17, 2016, through the entry of the confirmation order means that the property the Debtor claimed as exempt - as well as all nonexempt property of the Debtor - never left the estate. And since the Debtor's property never left the estate, that also means property claimed as exempt remains in the estate or, in other words, remains property of the estate. And as a result of the confirmation order, the status of the Debtor's property - all of it - as such is now binding on all parties in interest. Dkt. 81.

As property of the estate, this court has **<u>exclusive</u>** jurisdiction over all of the Debtor's personal property - exempt and nonexempt - that remains on Movant's premises. *See* 28 U.S.C. § 1334(e)(1). The Debtor has the right to remain in possession of that personal property. *See* 11 U.S.C. § 1306(b). And, except under circumstances not applicable here, the Debtor has the right to use that personal property to the exclusion of the Trustee. *See* 11 U.S.C. § 1303.

In exercise of its exclusive jurisdiction over all of the Debtor's exempt and nonexempt

property, the following is ordered:

1. The court confirms that the automatic stay of § 362(a) is not in effect and that it terminated by operation of law on August 12, 2016. 11 U.S.C. §§ 362(c)(3)(A); 11 U.S.C. § 362(j).

2. Movant's request to dispose of the Debtor's personal property currently located on the Property is denied. Movant shall not in any manner dispose of any of the Debtor's personal property in satisfaction of its prepetition judgment against the Debtor, or for any other reason. Moreover, inasmuch as Movant's claim is based on that judgment and the now confirmed amended plan provides for the treatment and payment of Movant's claim, even in the absence of the automatic stay Movant may not enforce the judgment. *In re Heilman*, 451 B.R. 522 (Bankr. C.D. Cal. 2011). Absent dismissal, Movant's remedies are limited to those available under the Bankruptcy Code. *Id.* The court will view any attempt by the Movant, its agents, representatives, associates, or any other person acting in concert with Movant to sell or otherwise dispose of the Debtor's exempt personal property currently on the Property as contempt of the confirmation order.

3. Pursuant to § 542(a), which requires an entity, other than a custodian, in possession, custody, or control, during the case, of property of the estate that the debtor may use or exempt, Movant is ordered to turnover all personal property currently on the Property to the Debtor by June 30, 2018. *In re Coleman*, 229 B.R. 428 (Bankr. N.D. Ill. 1999) (chapter 13 debtor has standing under § 542(a)). Movant should bear in mind that § 542(a) "creates an affirmative obligation on the part of the party holding estate property to turn the property over[.]" *In re Rutheford*, 329 B.R. 886, 892 (Bankr. N.D. Ga. 2005). Moreover, "[t]his affirmative obligation is self-executing and does not require the holding of a hearing or the entry of an order by the bankruptcy court." *In re Prince*, 2012 WL 1095506, *9 (Bankr. E.D. Tex. 2012) (citations omitted). Movant is to effectuate turnover by providing the Debtor and any party assisting the Debtor with daily access to the Property during normal business hours, *i.e.*, 8:00 a.m. to 5:00 p.m. Failure to comply with the turnover order will subject Movant to sanctions.

4. The Debtor may file a motion or adversary proceeding for sanctions for violation(s) of the automatic stay for any acts by the Movant that the Debtor claims violated the automatic stay between July 13, 2016 and August 12, 2016. A motion or adversary proceeding shall be filed by May 28, 2018. The hearing on this motion is continued to May 29, 2018, at 1:00 p.m. for a status conference and, if necessary, a scheduling conference if the Debtor elects to proceed by motion. If the Debtor proceeds by motion, the court will set deadlines for Movant's response and the Debtor's reply, set an evidentiary hearing, determine dates for Local Rule 9017-1 compliance, ascertain if discovery is needed, and address any other matters related thereto.

The court will enter an appropriate minute order.

20. 17-25575-B-13 ORACIO QUEZADA COUNTER MOTION TO DISMISS CASE
BJD-2 Mark A. Wolff 4-17-18 [75]

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

The matter will be determined at the scheduled hearing.

21. 17-25575-B-13 ORACIO QUEZADA MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 3-29-18 [68]

**Tentative Ruling:** The Motion to Confirm First Modified 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 was filed by Spartan Mortgage Services Inc. and the Chapter 13 Trustee.

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

First, the plan filed March 29, 2018, does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective December 1, 2017. Although the Debtor filed a response stating that the correct plan form is filed as an exhibit, the court will not accept a plan as an exhibit and the Debtor shall file the plan as a separate docketed modified plan.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,450.00, which represents approximately 67% of the April plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, feasibility depends on the Debtor selling or refinancing property by month 10 of the plan in order to pay in the lump sum of $230,000.00 and complete the plan. Debtor is currently in month nine of the plan and there is no motion to sell or refinance the property pending before the court. Additionally, in order for Debtor to properly fund the plan, he would have to sell or refinance the property for at least $431,000.00 plus fees and costs since the Debtor owes approximately $201,000.00 on the first mortgage. However, Schedule A/B lists the property as being worth only between $265,000.00 and $350,000.00. It does not appear realistic that Debtor will have equity in the property to pay off the lien and satisfy the requirements of the plan. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, as to the Trustee's objection that the plan is not feasible because Section 1.03 states a plan duration of 10 months but the Additional Provisions appears to show a total duration of 11 months, the Debtor filed a response stating that the plan is in fact 10 months since that the plan calls for two payments in April 2018. Debtor's clarifying payment terms shall be provided in a separate docketed modified plan.

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

The court will enter an appropriate minute order.

22. 18-21377-B-13 JPJ-1 — BRIAN/KIMBERLY WATKINS — W. Scott deBie — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-24-18 [30]

**Final Ruling:** No appearance at the May 15, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed March 9, 2018, will be confirmed.

The court will enter an appropriate minute order.

23. 18-21379-B-13 MSK-1 — MARISOL KANE, Scott Sagaria — OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC, 4-26-18 [16]

**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 Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Lakeview Loan Servicing, LLC's objection, the Debtor filed an amended plan on May 11, 2018. The confirmation hearing for the amended plan is scheduled for June 19, 2018. The earlier plan filed March 9, 2018, is not confirmed.

The court will enter an appropriate minute order.

24. 18-21479-B-13 JAN BULLARD
JPJ-1 Mary D. Anderson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-24-18 [13]

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

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

The plan does not contain either the Debtor or the Debtor's attorney's original wet signatures or electronic signatures. The plan does not comply with Local Bankr. R. 9004-1(c)(1)(B).

The plan filed March 14, 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. 18-21482-B-13 MARIBEL SHEHADEH
JPJ-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-24-18 [16]

**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 19, 2018, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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

Fifth, the plan proposes an impermissible modification of the secured claim of Seterus, the holder of the first deed of trust on the Debtor's principal residence. No evidence that the lender has consented to or is considering a loan modification has been presented. The court does not approve plans with terms such as those in Section 7 - Additional Provisions. In this court's view, those terms are an impermissible modification under 11 U.S.C. § 1322(b)(2). For this reason alone the plan will not be confirmed.

Sixth, the Debtor failed to list three of her prior bankruptcies filed within the last 8 years: 13-0768, 13-25504, and 17-28377. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed April 2, 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.

26. 18-21485-B-13 ANDREW KNIERIEM
AP-1 Pro Se
**Thru #27**

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
4-26-18 [29]

**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 National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $385,605.62 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 28, 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.

27. 18-21485-B-13 ANDREW KNIERIEM
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-24-18 [22]

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

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

First, the Debtor did not appear at the meeting of creditors set for April 19, 2018, as required pursuant to 11 U.S.C. § 343.

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

Third, the plan filed does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective December 1, 2017.

Fourth, the Debtor listed a creditor Mr. Cooper under Class 1 in the plan. However, the Debtor did not list the amount of pre-petition arrears or an arrearage dividend amount. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. §§ 1325(a), (1), (3), and (6).

Fifth, the Debtor failed to list three of his prior bankruptcies filed within the last

8 years: 10-30250, 10-24354, and 16-23056. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed March 28, 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.

28. 18-21587-B-13 JENNIFER MIZE
AP-2 Pro Se
**Thru #29**
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-18 [25]

**Final Ruling:** No appearance at the May 11, 2010, hearing is required.

The Motion for In Rem Relief from Automatic Stay and Memorandum of Points and Authorities in Support Thereof 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.

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 211 Aldeburgh Circle, Sacramento, California (the "Property"). Movant has provided the Declaration of Marcy Garcia to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Garcia Declaration states that there are 91 pre-petition payments in default, with a total of $124,675.46 in pre-petition payments past due.

Movant also asserts that Debtor has engaged in a scheme to delay, hinder, or defraud Movant from foreclosing on the property by filing repeated bankruptcy cases and by making an unauthorized transfer of 50% interest in the Property to Debtor's father, Segundo L. Almogela, who himself filed two bankruptcy cases and both of which were dismissed.

Bankruptcy filings of Jennifer A. Mize

| | | |
|---|---|---|
| Case 15-24451 | Filed 6/01/2015 | Closed on 8/11/2015 |
| Case 15-25895 | Filed 7/27/2015 | Closed on 12/1/2015 |
| Case 16-23636 | Filed 6/02/2016 | Closed on 9/21/2016 |
| Case 16-26710 | Filed 10/7/2016 | Closed on 3/22/2017 |
| Case 17-26899 | Filed 10/19/2017 | Closed on 3/28/2018 |
| Case 18-21587 | Filed 3/19/2018 | Open |

Bankruptcy filings of Segundo L. Almogela

| | | |
|---|---|---|
| Case 17-20022 | Filed 1/03/2017 | Case Closed on 7/27/2017 |
| Case 17-23993 | Filed 6/15/2017 | Case Closed on 9/08/2017 |

**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).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, 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). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, 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).

Finally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor has filed bankruptcy a total of six (6) times in an effort to thwart Movant from foreclosing on the Property. In the prior bankruptcies, Debtor's case was dismissed for failure to timely file documents (case nos. 15-24451, 15-25895), failure to pay filing fees after an order to show cause was issued (case no. 16-23636), ineligibility to be a debtor pursuant to 11 U.S.C. § 109(g)(1) (case no. 16-26710), and failure to properly report prior bankruptcy cases, failure to attend the meeting of creditors, failure to make plan payments, failure to provide tax returns, failure to provide pay advices, and for proposing a blank Chapter 13 plan (case no. 17-26899).

The Debtor also executed and recorded a quitclaim deed on January 4, 2017, whereby Debtor purported to grant an undivided 50% interest to her father, Segundo L. Almogela, for no consideration. Mr. Almogela himself filed bankruptcy a total of two (2) times and his cases were dismissed for failure to make plan payments, failure to appear at the meeting of creditors, and failure to provide tax returns.

From the evidence presented, the court finds that Debtor and Mr. Almogela did not make any good faith attempt to obtain bankruptcy relief. In fact, one of Mr. Almogela's bankruptcy cases was filed just one day before the unauthorized January 4, 2017, transfer of the Property from Debtor to Mr. Almogela. Debtor has abused the bankruptcy code with a scheme to delay, hinder, or defraud Movant from exercising its rights under the loan and non-bankruptcy law.

The court shall issue an order terminating and vacating the automatic stay of 11 U.S.C. § 362(a) and co-debtor stay of 11 U.S.C. § 1301(a) 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.

This court's order shall be binding and effective in any other case under the Bankruptcy Code purporting to affect the Property and filed not later than two (2) years after the date of entry except that a debtor in a subsequent case may move for relief from the order based upon good cause shown after notice and hearing.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

29. 18-21587-B-13 JENNIFER MIZE
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-24-18 [34]

**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 deny confirmation of the plan.

First, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the plan does not specify a minimum dividend to Class 7 unsecured nonpriority creditors at § 3.14 pursuant to 11 U.S.C. § 1325(a)(1).

Third, the Debtor did not list on Schedule D her testified pre-petition arrearages owed to the first deed of trust Nationstar/Mr., Cooper. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

Fourth, the Debtor failed to list any of her prior bankruptcies filed within the last 8 years: 15-24451, 15-25895, 16-23636, 16-26710, and 17-26899. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Fifth, the Debtor has not provided a written declaration from her father Segundo Almogela in support of his willingness and ability to make $5,000.00 per month contributions to the Debtor. Schedule I, Question #11, states that the Debtor receives $5,000.00 per month from her father. The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed March 19, 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.

30. 18-21994-B-13 ALVIN CATLIN
LBG-1 Lucas B. Garcia

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
4-16-18 [12]

**Tentative Ruling:** This matter was continued from May 1, 2018, to allow the Debtor additional time to file additional declarations in support of its motion to extend the automatic stay.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(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.

In Debtor's declaration filed May 88, 2018 (dkt. 25), Debtor states that his circumstances have changed because his medical complications have been treated with great success and will no longer cause a reduction of income. Additionally, Debtor states that his employment, although commissioned based, is very regular and does not involve his need to build up a client base to start receiving commission.

The court finds that the Debtor has clarified how his financial circumstances have changed. The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court will enter an appropriate minute order.

31. 18-20812-B-13 MATHEW BARNES
JPJ-1 Michael O'Dowd Hays

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-16-18 [19]

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

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

The Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The Debtor did appear at his continued meeting of creditors held May 11, 2018, as required pursuant to 11 U.S.C. § 343.

Because the Debtor has not provided the Trustee with a copy of the income tax return, the plan filed February 16, 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.

32. 18-20871-B-13 VICTORIA RUGG
JPJ-1 Douglas B. Jacobs

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-16-18 [14]

CONTINUED TO 6/19/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/14/18.

**Final Ruling**: No appearance at the May 15, 2018, hearing is required.

The court will enter an appropriate minute order.

33. 18-20994-B-13 BRIAN HAMILTON
JPJ-1 Samuel C. Williams

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-16-18 [18]

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

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

First, the plan will take approximately 496 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan cannot be fully assessed for feasibility or effectively administered because the terms for payment of the pre-petition arrears owed to Shasta County Tax Assessor are unclear. Section 3.07 of the plan specifies a monthly payment of 100%. It is not possible for the Trustee to pay the pre-petition arrears without a specific dollar amount of the monthly arrearage dividend.

Third, the treatment of Shasta Tax Assessor in Class 1 appears to be improper. The proof of claim filed by Shasta County Tax Collector shows property taxes owing for the years 2010 and 2017. It appears that the past-due property taxes have fully matured and the appropriate treatment for Shasta Tax Assessor is in Class 2 with an annual interest rate of 18% in accordance with 11 U.S.C. § 511.

Fourth, the Debtor did not submit proof of his social security number to the Trustee at the original meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). However, it appears that proof of social security number was provided at the continued meeting of creditors held May 11, 2018, since the meeting was concluded as to Debtor.

For the first through third reasons stated above, the plan filed March 8, 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.