

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 31, 2016 at 1:00 p.m.

1.	<u>16-20613</u> -B-13	URAL THOMAS Lucas B. Garcia	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-9-16 [<u>52</u>]
----	---------------------------------------	--------------------------------	--

Final Ruling: No appearance at the May 31, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$74.00 due May 3, 2016. The court's docket reflects that the default was cured on May 9, 2016. The payment was \$151.00 and included the final installment.

The court will enter an appropriate minute order.

2. [14-29215](#)-B-13 JEFFERY/SANDRA THOMAS MOTION TO DISMISS CASE
 JPJ-2 Mary Ellen Terranella 4-27-16 [[82](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 2016, hearing is required.

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

The court will enter an appropriate minute order.

3. [16-21328](#)-B-13 GABRIEL GOMEZ AND
ANGELICA CERVANTES
David Foyil

ORDER TO SHOW CAUSE
5-5-16 [[38](#)]

Tentative Ruling: The court issues no tentative ruling.

An order to show cause was issued requiring David Foyil, counsel for Debtors, to show cause in person and (1) explain the extent of his representation, (2) explain his fee arrangement and fees paid by the Debtors to him, and (3) explain why his fees should not be disgorged. Dkt. 38. Counsel filed a response on May 17, 2016. No telephonic appearance is permitted.

The matter will be determined at the scheduled hearing.

4. [15-29129](#)-B-13 SUZANNE RYAN-BEEDY
JPJ-1 Lucas B. Garcia

MOTION TO DISMISS CASE
4-12-16 [[53](#)]

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

The court's decision is to deny the motion as moot.

The Chapter 13 Trustee moved to dismiss the case on the ground that the Debtor failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

The Debtor filed a response stating that it has taken action to prosecute this case by filing an amended chapter 13 plan and motion to confirm minutes after the Trustee filed its motion to dismiss. The matter was heard on May 24, 2016, and the motion to confirm was granted.

The court will enter an appropriate minute order.

5. [12-28631](#)-B-13 KEVIN/INEZ SCOTT MOTION TO DISMISS CASE
JPJ-4 Peter L. Cianchetta 4-27-16 [[125](#)]
Thru #6

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 2016, hearing is required.

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

The court will enter an appropriate minute order.

6. [12-28631](#)-B-13 KEVIN/INEZ SCOTT MOTION TO DISMISS CASE
JPJ-5 Peter L. Cianchetta 5-13-16 [[129](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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.

The court's decision is to dismiss the case.

The Debtors have failed and refused to turn over a bonus that Debtor Kevin Scott received in February 2016 as required under a stipulation entered into by the Debtors, by and through their attorney, and the Trustee and filed on September 26, 2014, which requires the Debtors to pay bonuses received into the chapter 13 plan. There is cause to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(6).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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.

The court's decision is to dismiss the case.

First, the Debtors have not taken further action to confirm a plan after the court denied the Debtors' motion to confirm amended plan on April 19, 2016. The Debtors have not prosecuted this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtors have not provided the Trustee with requested copies of certain items related to Debtors' business Pave Rite including, but not limited to, bank account statements for the six-month period preceding the filing of the petition and individual Profit and Loss Statements for the six-month period preceding the filing of the case. The Debtors have not complied with 11 U.S.C. § 521.

Third, the Debtors have not amended their petition to list the two bankruptcy cases that were filed in 2009 as requested by the Trustee at the § 341 meeting on March 17, 2016. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fourth, the Debtors have not amended Schedule B of the petition to remove the vehicles that had been previously sold and add a dump truck, as well as amend the Statement of Financial Affairs to properly account for the items that had been previously sold in the two-year period preceding the filing of this case. The Debtors' failure to file any of the amendments requested by the Trustee has prevented the Trustee from performing his duties under 11 U.S.C. § 1302.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 31, 2016, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (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 dismiss the case.

First, the Debtors failed to appear at the duly noticed first meeting of creditors set for April 21, 2016, as required pursuant to 11 U.S.C. § 343. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$520.00, which represents approximately 1 plan payment. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, the Debtors have 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 Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

9. [15-28458](#)-B-13 DANIEL/BRITTANY CLARK
JPJ-2 Rick Morin

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
5-3-16 [[30](#)]

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

The court's decision is to dismiss this case if the Debtors are not current at the time of the hearing on May 31, 2016.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted on the ground that Debtors are \$3,182.00 delinquent in plan payments, which represents 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,182.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Response by Debtors

Debtors filed a response stating that they will become current no later than May 31, 2016 and that, therefore, their case should not be converted. Debtors assert that their untimeliness with plan payments is due to Debtor Daniel Clark being a self-employed contractor and his cash flow is unpredictable.

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 will exist to dismiss this case if the Debtors fail to cure their delinquency and are not current on May 31, 2016, and if the Debtors are not current on that date this case will be dismissed.

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

The court's decision is to not dismiss the case.

The Chapter 13 Trustee moves to dismiss the case on the ground that the confirmed plan will take a total of 76 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 16 months longer than the proposed commitment period of 60 months. The case is currently in month 54 and will be in month 55 on the date this motion is heard. The Trustee states that the Debtor did not timely file objections to claims nor timely file a modified plan and motion to confirm it within 90 calendar days after service of the Notice of Filed Claims, which the Trustee filed and served on September 28, 2012. See Paragraph 6 of General Order 05-03 (applicable in cases filed on or after October 17, 2005, but before May 1, 2012).

The Debtor has filed a response stating that a modified plan will be filed and set for hearing to correct the Trustee's basis for dismissal. The Debtor asserts that he intends to reduce the unsecured dividend to unsecured creditors so that his plan can complete within 60 months. A modified plan was filed on May 24, 2016.

Given the unique circumstances that the Debtor is in month 54 of his plan payments and has filed a modified plan, cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

11. [16-21664](#)-B-13 BRYAN ULRICK AND BILLI JO ORDER TO SHOW CAUSE - FAILURE
RICHMOND-ULRICK TO PAY FEES
Kristy A. Hernandez 4-22-16 [[16](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on April 18, 2016. The delinquent installment was paid on May 11, 2016. In addition, the Debtors made payments in the amount of \$15.00 and \$62.00 on May 19, 2016, for an installment due May 17, 2016.

Nonetheless, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

12. [16-20570](#)-B-13 STEPHANIE RUSCIGNO
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-11-16 [[58](#)]

Final Ruling: No appearance at the May 31, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$83.00 due April 8, 2016. The court's docket reflects that the default was cured on April 27, 2016. The payment was \$335.00 and included the final installment.

The court will enter an appropriate minute order.

13. [14-23177](#)-B-13 GERALD YOUNG AND CARMEN MOTION TO DISMISS CASE
JPJ-3 HEINRICHS YOUNG 4-27-16 [[51](#)]
Diana J. Cavanaugh

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

The court's decision is to not dismiss the case provided that the Debtors have provided the Chapter 13 Trustee with all documents requested pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02. The Debtors state in their response that they are working on assembling the required documents and were delayed in completing this task due to both being ill.

Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

14. [16-20085](#)-B-13 ADRIAN PEREZ
Pro Se

TRUSTEE'S FINAL REPORT AND
ACCOUNT
4-13-16 [[33](#)]

DEBTOR DISMISSED: 04/03/2016

Tentative Ruling: The Objection to Trustee's Final Report and Account has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, a review of the docket shows that Chapter 13 Trustee Jan Johnson was not served.

The court's decision is to overrule the objection with prejudice.

The Debtor's case was dismissed on April 3, 2016, for reasons stated in the Civil Minutes at dkt. 28. The Debtor is pro se and mailed a letter to the clerk's office addressed to Wayne Blackwelder objecting to the Trustee's Final Report and Account. There is no indication that the Chapter 13 Trustee was served.

Although not titled as such, the Debtor's letter appears to be a motion to reconsider dismissal of case. The Debtor asserts that he had mailed the Trustee a letter explaining why his financial status had changed, namely that his wife was injured on the job and that she cannot work. The Debtor includes this earlier letter as p. 2 of dkt. 37; however, that letter, too, was mailed to the clerk's office and not to the Chapter 13 Trustee's address.

In addition to defective service, the Debtor does not provide any explanation for his failure to provide the Trustee with certain documents (i.e., tax returns, Certificate of completion, Class 1 Checklist and Authorization to Release Information, payment advices), file a plan, or amend his Statement of Financial Affairs. All of these duties relate to filing or amending documents and should not be hindered by any financial changes the Debtor may have experienced. The Debtor also does not explain how his medical condition prevented him from filing or amending these documents.

Due to defective service and based on the evidence before the court, the objection is overruled with prejudice and the Trustee's final report is approved.

The court will enter an appropriate minute order.

15. [16-20697](#)-B-13 ANGELO WILLIAMS ORDER TO SHOW CAUSE - FAILURE
[Thru#17](#) Pro Se TO PAY FEES
4-13-16 [[23](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$76.00 due April 8, 2016. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

16. [16-20697](#)-B-13 ANGELO WILLIAMS ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
5-13-16 [[35](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due May 9, 2016. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

17. [16-20697](#)-B-13 ANGELO WILLIAMS MOTION TO DISMISS CASE
JPJ-2 Pro Se 4-27-16 [[28](#)]

Final Ruling: No appearance at the May 31, 2016, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (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 dismiss the case.

First, 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).

Second, the Debtor has not provided the Trustee with requested copies of certain items related to his self-employment in sales including, but not limited to, Profit and Loss Statements for the six-month period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$874.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional payment in the amount of \$437.00 will also be due. The Debtor has not made any plan payments since this petition was filed on February 8, 2016. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fourth, the Debtor has not taken further action to confirm a plan after the Trustee's objection to confirmation was heard and sustained on April 12, 2016. The Debtor has failed to prosecute this case, causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Fifth, the Debtor has failed to amend the petition to list a previous bankruptcy case that was filed within the eight-year period preceding the filing of this case (no. 09-24723 filed on March 18, 2009) and failed to amend the Schedules to properly account for his interest in a boat and two cars that had not been previously disclosed. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3) since he has failed to cooperate with the Trustee. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 10 Smokey Leaf Court, Sacramento, California ("Property").

The proposed purchaser of the property Sum Investment Group, Inc. has agreed to purchase the Property for \$172,000.00 in cash. The Debtor filed a Motion to Approve Shortsale with the court on August 17, 2015, and which was heard on September 2, 2015. The court granted preliminary approval of the short sale. The Debtor now seeks final approval of the sale. The Property is secured by a first deed of trust held by HSBC and there are no other deeds or security interests held by other parties encumbering the Property. The deed of HSBC was listed in the first amended chapter 13 plan as a Class 4 claim with the payment on the loan to be made by a third party purchaser upon the close of the short sale. HSBC consents to the short sale. Dkt. 89, Exh. A. No net proceeds will be realized by the Debtor or will be available to the Trustee. The Debtor previously believed that she was eligible to receive Home Affordable Foreclosure Alternatives ("HAFA") but discovered that she was ineligible because HSBC does not participate in that program.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

19. [16-20564](#)-B-13 KATRINA NOPEL
PLC-1 Peter L. Cianchetta
Thru #20

CONTINUED MOTION TO AVOID LIEN
OF EMPLOYMENT DEVELOPMENT
DEPARTMENT
4-20-16 [[28](#)]

Final Ruling: No appearance at the May 31, 2016, hearing is required.

The Motion to Avoid Judicial Lien 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.

For clarification, the court notes that on May 23, 2016, it posted a final ruling on this motion which was initially set for hearing on May 24, 2016. In that final ruling the court noted that the Employment Development Department ("EDD") was served at an address that differed from the address the EDD stated in its proof of claim where notices should be sent. *See Fed. R. Bankr. Pro. 2002(g)(2)*. As a result, the motion was denied without prejudice.

At the hearing on May 24, 2016, it was brought to the court's attention that Fed. R. Bankr. Pro. 5003(e) creates a conclusive presumption that an address of a governmental agency listed on the roster of governmental agencies maintained by the clerk is a proper service address. Based on the representation that the EDD was served at the address listed on the roster of governmental agencies maintained by the clerk of this court, the court vacated its final ruling and continued this matter May 31, 2016, at 1:00 p.m. Although the address for the EDD listed on the clerk's roster differs from the service address the EDD included in its proof of claim, the court has confirmed that the EDD was served at the roster address. That is proper service.

As to the motion, considering the EDD's judicial lien, all other liens, the exemption, and the value of the property under the mathematical formula of 11 U.S.C. § 522(f)(2) the court finds and concludes that the EDD's judicial lien impairs the Debtor's exemption in the property.¹ Therefore, the motion is granted and the EDD's judicial lien is avoided in its entirety.

The court will enter an appropriate minute order.

¹There appears to be a discrepancy as to the amount of the EDD's judicial lien. According to the motion and schedules, the amount is \$11,000.00. According to the abstract of judgment, the amount is \$2,792.88. The difference does not affect the outcome. Counsel is also reminded to thoroughly review documents and to redact sensitive personally identifiable information before documents are filed as exhibits. *See Fed. R. Bankr. Pro. 9037(a); LR 9037-1(e)*.

20. [16-20564](#)-B-13 KATRINA NOPEL
PLC-3 Peter L. Cianchetta

CONTINUED MOTION TO CONFIRM
PLAN
4-21-16 [[33](#)]

Final Ruling: No appearance at the May 31, 2016, hearing is required.

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

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

Feasibility of the plan depends on the granting of a motion to avoid lien for Employment Development Department. That matter was granted at Item #19.

The Trustee's objection to confirmation on the ground that feasibility depends on the granting of a motion to value collateral for HSBC Bank USA, National Association is no longer at issue. The motion to value collateral was granted on May 10, 2016.

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

The court will enter an appropriate minute order.