UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 6, 2017 at 1:00 p.m.

1.	13-21400-B-13 PGM-2	DEBORAH SHEIDLER Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY 5-9-17 [78]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Application for Attorney 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)(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 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 Debtor's Chapter 13 plan, Peter Macaluso ("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, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 67 ("Order Confirming Plan"). Applicant now seeks additional compensation in the amount of $1,425.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 82.

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).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would be granted a loan modification requiring modification of the confirmed chapter 13 plan. 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 Debtor, estate, and creditors.

However, counsel's time is billed in irregular six-minute and quarter-hour increments. Counsel's billing records include multiple time entries billed in quarter-hour increments (2/21/17, 3/7/17). Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133, *17 (N.D. Cal. 2011) (court reduced requested fees for billing in quarter-hour increments because use of such billing likely overstated the number of hours actually worked).

The two time entries billed at quarter-hour increments both consist of reviewing posted rulings. The court seriously doubts that it took counsel fifteen minutes each time, or a half an hour combined, to review two rulings. Therefore, the court will reduce the time entries on 2/21/17 and 3/7/17 to .10 each. *See Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358, *6 (S.D. Ala. 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). That results in a .30 reduction in time and a corresponding $90.00 reduction in fees.

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

Additional Fees	$1,425.00
(Less: Time Reduction	$ 90.00)
Additional Costs and Expenses	$0
Amount Allowed:	**$1,335.00**

The motion is ORDERED GRANTED for additional fees of $1,335.00 and costs and expenses of $0.00

2.	16-24101-B-13 DAO-1	ROBERT/GAIL CHANEY Dale A. Orthner	OBJECTION TO CLAIM OF CIT BANK, N.A., CLAIM NUMBER 4 4-10-17 [17]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The motion will be dismissed without prejudice because it was not served on the respondent creditor in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the instant motion indicates that the respondent creditor was not served with notice of the motion addressed solely to the creditor's officer.

The debtor served the motion on CIT Bank addressed to and "Officer, Managing or General Agent."

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent"). *See also In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.), dkt. 42.

The motion is ORDERED DISMISSED without prejudice.

3. 17-22206-B-13 ENOCH ELISHA MARSH
JPJ-1 David Foyil
Thru #4

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-17 [24]

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

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

First, the Debtor has 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 Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to the Debtor's income from rental property and/or operation of a business.

Third, the Debtor failed to disclose their business information on the Statement of Financial Affairs and failed to list their business, tools, and inventory on Schedules A/B. The Debtor has not filed amended documents to accurately disclose this information as requested by the Trustee at the § 341 meeting. The Debtor has not complied with 11 U.S.C. § 521(a)(1).

Fourth, feasibility of the plan depends on the granting of a motion to value collateral of Paul Manka and Newport Holdings Corporation. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a chapter 7 proceeding. The Trustee plans to file an objection to Debtor's claim of exemption that would increase non-exempt property in the estate to $6,260, where the plan currently offers unsecured creditors only $1,240.48.

The plan filed April 1, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

4. 17-22206-B-13 JPJ-2 — ENOCH ELISHA MARSH, David Foyil — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS, 5-11-17 [27]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions as follows:

First, the Debtor has claimed his interest in a 2002 Honda XR650 Motorcycle, Yacht Club Jet Ski Trailer, and cash on hand with a total value of $1,870.00 as exempt under California Code of Civil Procedure §704.080. This claim of exemption, however, is available for Social Security and Public Benefits Payments only. The assets as described in Schedules A/B do not appear to constitute a social security benefit or public benefits payment.

Second, the Debtor has claimed his interest in a Sig Sauer P22G 9MM Handgun, EN Scar 17 .308 Rifle, and Springfield MIA Socom 16.308 Rifle with a total value of $5,000.00 as exempt under California Code of Civil Procedure §704.020. This claim of exemption, however, is available for household goods only. The assets are described on Schedule B as guns do not appear to constitute household goods.

The aforementioned assets have been improperly claimed as exempt under C.C.P. §§ 704.020 and 704.080.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the ruling appended to the minutes.

5. 17-21810-B-13 MONTE KLINKENBORG
HJH-1 Mikalah R. Liviakis
Thru #6

OBJECTION TO CONFIRMATION OF PLAN BY HELLEN J. HERNANDEZ
5-11-17 [22]

Tentative Ruling: The Creditor's 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/s, 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 deny confirmation of the plan.

Creditor, Hellen J. Hernandez, brings this objection based on her priority claim (POC no. 6) in the amount of $30,000 for court-ordered attorney fees in the nature of domestic support.

First, Debtor's plan does not provide for the full payment of all claims entitled to priority as required by 11 U.S.C. § 1322(a)(2).

Second, the plan values Debtor's real property at $675,000, but Creditor asserts that extensive evidence during state court domestic support proceedings spanning 2015-2016 established the value of the real property as $880,000. This undervaluation demonstrates that the Debtor may not have filed his petition in good faith as required by 11 U.S.C. § 1325(a)(3).

The Debtor responds that service was improper as the proof of service does not state when the documents were served. The Debtor notes that there is a date near the signature line at the bottom of the proof of service. The Debtor further notes that the deadline for timely filed objections was May 11, 2017.

A review of the proof of service (dkt. 26) indicates that service was proper and notice was timely served on May 11, 2017. Thus, the service issues raised in the Debtor's response are without merit.

The plan filed March 20, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

6. 17-21810-B-13 MONTE KLINKENBORG
KSC-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY KRISTINE S. CUMMINGS
5-11-17 [24]

Tentative Ruling: The Creditor's 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/s, 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 deny confirmation of the plan.

Creditor, Kristine S. Cummings, brings this objection based on her priority claim (POC no. 5) in the amount of $39,870 for a court-ordered domestic support obligation.

First, Debtor's plan does not provide for the full payment of all claims entitled to priority as required by 11 U.S.C. § 1322(a)(2).

Second, the plan values Debtor's real property at $675,000, but Creditor asserts that extensive evidence during state court domestic support proceedings spanning 2015-2016 established the value of the real property as $880,000. This undervaluation demonstrates that the Debtor may not have filed his petition in good faith as required by 11 U.S.C. § 1325(a)(3).

The Debtor responds that service was improper as the proof of service does not state when the documents were served. The Debtor notes that there is a date near the signature line at the bottom of the proof of service. The Debtor further notes that the deadline for timely filed objections was May 11, 2017.

A review of the proof of service (dkt. 26) indicates that service was proper and notice was timely served on May 11, 2017. Thus, the service issues raised in the Debtor's response are without merit.

The plan filed March 20, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED reasons stated in the ruling appended to the minutes.

7. 16-27611-B-13 MICHAEL/ESTHER SPEARMAN MOTION TO CONFIRM PLAN
EJS-1 Eric John Schwab 4-18-17 [35]

Tentative Ruling: 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 not confirm the second amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Debtor's April 18, 2017 amended Form 122C-2 shows monthly disposable income in the amount of $679.29, and the Debtor must pay no less than $40,757.40 to unsecured non-priority creditors. Class 7 claims total $118,445.33. Thus, the amended plan proposes an 11% dividend to unsecured creditors, where Trustee calculates that the plan must pay no less than 34.4%.

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

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

8. 17-22511-B-13 JOHN DUNNE
JGL-1 Jennifer G. Lee

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
5-21-17 [16]

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

The court's decision is to value the secured claim of Wells Fargo Dealer Services at $17,625.00.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Infiniti FX50 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $17,625.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July of 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $22,181.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $17,625.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

9. 16-28414-B-13 ARTHUR/TRISHA WHITTEN MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso 4-24-17 [76]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Motion to Confirm First Amended Plan Filed April 24, 2017 has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 24, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10. 17-22214-B-13 RICHARD CRABTREE
JPJ-1 Douglas B. Jacobs
Thru #11

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-15-17 [18]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 / conditionally deny the motion to dismiss.

First, the plan does not fully pay the priority claim of the Internal Revenue Service. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Second, the claim of Nissan Motor Acceptance Corporation is mis-classified as a class 4 claim. It should rather be placed in class 2 as the claim matures prior to completion of the plan.

Third, according to Schedule J, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

The plan filed April 3, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

11.	17-22214-B-13 USA-1	RICHARD CRABTREE Douglas B. Jacobs	OBJECTION TO CONFIRMATION OF PLAN BY INTERNAL REVENUE SERVICE 5-8-17 [13]

Tentative Ruling: The 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). A 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 plan does not fully pay the priority claim of the Internal Revenue Service. The plan does not comply with 11 U.S.C. § 1322(a)(2). The IRS timely filed a proof of claim. Proof of Claim, 2-1. The IRS holds a secured claim of $7,200, a priority unsecured claim in the amount of $319,125.49, and a general unsecured claim of $64,824.20. The plan does not provide for payment of the IRS secured claim and only partially provides for payment of the IRS's unsecured priority claim in the last page of the plan (after the signature page) listed as paragraph 6.01, which states: "Class five creditor, the Internal Revenue Service will receive a total of $52,000.00."

The Debtor filed a response indicating intent to file an amended plan and seek confirmation with consent of the IRS.

The plan filed April 3, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

12. 17-22427-B-13 TOLLIFERRO SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1 Hayk Grigoryan — 5-9-17 [27]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3591 Cattle Drive, Sacramento, California (the "Property"). Movant has provided the Declaration of Sherry Elaine Gonzalez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that there are 0 post-petition defaults, with a total of $0 in post-petition payments past due. Additionally, there are 47 pre-petition payments in default, with a total of $64,144.43 in pre-petition payments past due.

Opposition has been filed by Tolliferro "Debtor" asserting the Debtor's intention to provide adequate protection payments to Creditor through the Debtor's proposed Chapter 13 plan. Further, the Debtor states that his financial condition has substantial changed as Debtor has rented out a bedroom in the subject property with a monthly payment of $575 a month, starting June 1, 2017.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $251,259.83 (including $251,259.83 secured by Movant's first deed of trust) as stated in the Gonzalez Declaration and Schedule D filed by the Debtor. The value of the Property is determined to be $274,000.00 as stated in Schedules A and D filed by Debtor.

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 47 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).

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 five times in an effort to thwart Movant from foreclosing on the Property. Three of the bankruptcies were filed on or near the eve of scheduled foreclosure. Further, the Debtor has attempted to transfer his interest in the subject property to thwart Creditor. On or about March 3, 2005, Debtor executed a Quitclaim Deed purportedly conveying an interest in the Property to himself and to co-debtor Mildred D. Jacks. See dkt. 31, ex. D.

Notably, the Debtor has not proffered any evidence (i.e. a declaration and/or lease agreement) to support the contentions made in the opposition.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

13. 16-28428-B-13 DANZHEL TU
JPJ-2 Justin K. Kuney

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
4-18-17 [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)(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 without prejudice.

This motion has been filed by Chapter 13 Trustee Jan P. Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

Movant argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 10, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Response by Debtors

In Opposition to the Motion, Debtor asserts that he has filed and served a Motion to Confirm their First Amended Plan. The hearing on the motion is scheduled for July 17, 2017. Dkt. 28. Debtor further asserts that he is current under the proposed plan.

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 dismiss or convert this case pursuant to 11 U.S.C.§ 1307(c) since the Debtors have recently filed an amended plan and set a hearing for its confirmation. The motion is denied without prejudice and the case is not dismissed or converted to a case under Chapter 7.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

14.	15-28729-B-13 JPJ-1	CHARLES EVANS W. Scott de Bie	OBJECTION TO CLAIM OF TWO JINN, INC., CLAIM NUMBER 8 4-7-17 [33]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 8 of Two Jinn Inc. dba Aladdin Bail Bonds and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee("Objector"), requests that the court disallow the claim of Two Jinn Inc. dba Aladdin Bail Bonds ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $47,705.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was March 16, 2016. Notice of Bankruptcy Filing and Deadlines. The Creditor's Proof of Claim was filed March 6, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and

> excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

15. 16-26038-B-13 VICTORIA ROCHESTER MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab 4-14-17 [22]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

The court's decision is to permit the requested modification and confirm the 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 14, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor/s shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The objection is ORDERED SUSTAINED reasons stated in the ruling appended to the minutes.

16. 17-21740-B-13 RICHELLE/RHODORA MANUZON MOTION TO CONFIRM PLAN
SNM-3 Stephen N. Murphy 4-12-17 [26]
Thru #18

Tentative Ruling: 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 plan filed on April 12, 2017.

First, feasibility of the plan depends on the granting of a motion to value collateral of the Internal Revenue Service. The Debtors filed a motion to value such collateral that was denied at the hearing held on May 16, 2017. See Dkt. 45. The Debtors subsequently filed another motion to value to be heard on the same date as this motion to confirm. See matter 18 below; Dkt.40.

In their first motion to value, the Debtors valued the subject collateral at $6,548.00, which the court determined was based on hearsay. In their second motion to value currently pending before the court, the Debtors provided admissible evidence to support a valuation of the subject collateral at $31,159.00. The court's decision is to grant the motion to value. Accordingly, the Trustee's sole concern as to plan confirmation is resolved.

The plan filed on April 12, 2017 complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. 17-21740-B-13 RICHELLE/RHODORA MANUZON COUNTER MOTION TO DISMISS CASE
SNM-3 Stephen N. Murphy 5-23-17 [46]

Tentative Ruling: The Opposition to Motion to Confirm Chapter 13 Plan and Counter Motion to Conditionally 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 deny the motion to dismiss.

The motion to dismiss is based on unfeasibility of Debtors' chapter 13 plan. The court has found the plan to feasible and confirmable. See matter 16 above.

The plan filed April 12, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a). The motion to dismiss is denied.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

18. 17-21740-B-13 RICHELLE/RHODORA MANUZON MOTION TO VALUE COLLATERAL OF
SNM-4 Stephen N. Murphy INTERNAL REVENUE SERVICE
5-18-17 [40]

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

The court's decision is to value the secured claim of the Internal Revenue Service at $31,159.00.

Debtors' motion to value the secured claim of Internal Revenue Service ("Lien Holder") is accompanied by Debtors' declaration. Debtors are the owners of a 2011 Mazda 3, 2003 Toyota Sequoia, 2011 Scion tC, 2015 Honda Accord, household goods, household electronics, clothes, jewelry, wearing apparel, and bank deposits (collectively, "Personal Property"). The Debtors do not claim an interest in any real property according to Schedules A/B. The Debtors seek to value the Personal Property at a replacement value of $31,159.00 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. 5-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

Discussion

The claim of Lien Holder is in the approximate amount of $41,388.15 based on Claim No. 5-1 and encumbers all property, both real and personal, owned by the Debtors. See 26 U.S.C. § 6321. A review of Schedule A/B shows that the Debtors do not own any real property and that they only own various aforementioned personal property. 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 Declaration of Richelle Manuzon and Rhodora Manuzon has been provided to introduce evidence as to the value of the Personal Property. The Debtors testified that their motor vehicles are valued based on what they believe a retail merchant would charge for comparable used cars using the retail appraisal service at Edmunds.com to determine the amount. Their other personal property is valued based on what we would pay for comparable used items in a thrift shop. They believe that the price a retail merchant would charge for our real and personal property is $31,159.00.

The Debtors have persuaded the court regarding their position for the value of their personal property. The Creditor's secured claim is determined to be in the amount of $31,159.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

19. 17-21544-B-13 WILLIAM DURBIN
AP-1 Douglas B. Jacobs
Thru #21

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, N.A.
5-8-17 [43]

Tentative Ruling: The 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 overrule the objection to confirmation as moot based on the court's ruling at Item #20 and the dismissal of this chapter 13 case pursuant to 11 U.S.C. § 109(g)(2).

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 order to show cause will be sustained and this case will be dismissed pursuant to 11 U.S.C. § 109(g)(2).

The Order to Show Cause was issued due to Debtor's filing this chapter 13 case in bad faith. The Order states:

> *Debtor William H. Durbin has moved for a voluntary dismissal of this chapter 13 case pursuant to 11 U.S.C. § 1307(b).' The debtor made that request ten (10) days after the court entered an amended order granting secured creditor Aran Investments, Inc., relief from the automatic stay of 11 U.S.C. § 362(a) to pursue its rights under applicable nonbankruptcy law as to its collateral. That stay relief order is the second such order this court has entered. The first order was entered on July 29, 2016, in the debtor's prior chapter 11 case, no. 16-23120. That chapter 11 case was dismissed on October 7, 2016, because the debtor failed to pay the filing fee. Between the dismissal of the debtor's prior chapter 11 case and the filing of this chapter 13 case, the debtor also engaged in the conduct described in the order entered in this case on April 7, 2017, at dkt. 34, which suggests this chapter 13 case was filed in bad faith.*

In response, the Debtor contends that this case should not be dismissed with prejudice as that designation is left for extreme situations where the debtor has engaged in egregious behavior that demonstrated bad faith and prejudices creditors, which is not applicable in this case. Rather, the Debtor states that he attempted a Chapter 11 bankruptcy by himself and failed. He then hired competent bankruptcy counsel to pursue a Chapter 13. This wasn't done in bad faith; but in a desperate attempt to stop the foreclosure of Debtor's home.

The Debtor also contends that conversion to Chapter 7 is inappropriate given that the schedules filed in the Chapter l3 matter show little property or debts other than the Debtor's home, thus a chapter 7 would accomplish little and do nothing to protect the primary creditor in this matter: the holder of the 2nd mortgage on the Debtor's home since the automatic stay has been lifted and they are proceeding with foreclosure.

Finally, the Debtor requests dismissal of this Chapter 13 case without prejudice but subject to the 180-day bar of 11 U.S.C. § 109(g)(2). The court will grant that request, sustain the order to show cause, and dismiss pursuant to § 109(g)(2).

21. 17-21544-B-13 WILLIAM DURBIN
JPJ-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-15-17 [56]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 overrule the objection to confirmation and deny the motion to dismiss both as moot based on the court's ruling at Item #20 and the dismissal of this chapter 13 case pursuant to 11 U.S.C. § 109(g)(2).

22. 17-21954-B-13 ROBIN/MARIA RUSHING — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Steele Lanphier — 5-11-17 [24]
Thru #23

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

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

First, the plan payment in the amount of $1,440 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,441. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, feasibility of the plan depends on the granting of a motion to value collateral of Consumer Portfolio Services. The court has granted the motion to value, see matter number 23 below (DCN SLE-1).

Third, the Debtors admitted that they failed to disclose household goods and a 401k in their schedules. The plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3), and the Debtors have failed to fully comply with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed April 5, 2017 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

23. 17-21954-B-13 ROBIN/MARIA RUSHING — MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES
SLE-1 Steele Lanphier — 4-25-17 [20]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

The court's decision is to value the secured claim of Consumer Portfolio Services, Inc. at $9,060.50.

Debtors' motion to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Nissan Sentra SR ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,060.50. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $8,000. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED reasons stated in the ruling appended to the minutes.

24. 16-24860-B-13 WILLIAM MILLER
JPJ-2 Michael Benavides

OBJECTION TO CLAIM OF CASHNETUSA, CLAIM NUMBER 10
4-7-17 [30]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 10 of CashNetUSA and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee("Objector"), requests that the court disallow the claim of CashNetUSA ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $4,108.33. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 30, 2016. Notice of Bankruptcy Filing and Deadlines. The Creditor's Proof of Claim was filed December 7, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six

> circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

25. 17-23060-B-13 SERGEY YANOVSKIY ORDER TO SHOW CAUSE
Thru #26 Pro Se 5-16-17 [19]

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 in response to Debtor's motion to dismiss this chapter 13 case. Debtor failed to disclose five prior bankruptcies on his voluntary petition filed in this current case. The court ordered THE Debtor to show cause in writing by May 31, 2017 why dismissal of this chapter 13 case should not be with prejudice under 11 U.S.C. § 109(g)(2), or alternatively, why this chapter 13 case should not be converted to a chapter 7 case.

The court's docket reflects that Debtor has not filed a response to show cause in writing.

The docket reflects that a motion for relief from the automatic stay of 11 U.S.C. § 362(a) was filed on May 9, 2017. [Dkt. 10]. Debtor requested dismissal of this case less than a week later on May 15, 2017. [Dkt. 17]. Therefore, the court will sustain the order to show case and dismiss this case pursuant to 11 U.S.C. § 109(g)(2).

The order to show cause is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes and the case is DISMISSED pursuant to 11 U.S.C. § 109(g)(2).

26. 17-23060-B-13 SERGEY YANOVSKIY
WAJ-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-9-17 [10]

AMANDIP SINGH VS.

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's decision is to deny this motion as moot based on its ruling in Item #25 dismissing this chapter 13 case pursuant to 11 U.S.C. § 109(g)(2).

27. 17-21962-B-13 SUANNE GRANDERSON
JPJ-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-17 [21]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 / conditionally deny the motion to dismiss.

First, the Trustee cannot accurately assess the feasability of the plan. At the § 341 meeting, the Debtor disclosed future contributions from her non-filing spouse. To date, the Debtor has not complied with the Trustee's request to file amended schedules that reflect such contributions.

The plan filed March 27, 2017 does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

28.	17-22063-B-13 AP-1 **Thru #29**	NAMATH KANDAHARI Timothy J. Walsh	OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, N.A. 5-10-17 [28]

Tentative Ruling: The 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, Creditor alerts the court that the Debtor filed a previous Chapter 13 petition (Case No. 16-27148) which was dismissed within the last five months for failure to appear and prosecute. The debtor has failed to appear at three different meetings of creditors in two separate cases within the last year. The Debtor's recent bankruptcy case has implications for the duration of the automatic stay, see 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

Second, The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $297,350 in pre-petition arrearage. 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 arrearage, the plan cannot be confirmed.

The plan filed March 29, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

29. 17-22063-B-13 NAMATH KANDAHARI
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-11-17 [31]

Tentative Ruling: The 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.

First, the Debtor did not appear at the meeting of creditors set for May 4, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor failed to disclose all information required by the petition, schedules, and Statement of Financial Affairs. Debtor's tax return reflects Debtor owns properties in Las Vegas, NV and Vacaville, CA that are not disclosed in the Schedules. The plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

Third, the plan payment of $3,700 for months 1-2 and $4,950 for months 3-10 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $9,000. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, the plan will take approximately 83 months to complete, which exceeds the maximum length of 60 months under 11 U.S.C. § 1322(d) and results in a commitment period that exceeds the permissible limit of 11 U.S.C. § 1325(b)(4).

Fifth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,700, 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).

Sixth, the feasibility of the plan depends on the granting of a motion to value collateral of Bank of America. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Seventh, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to whether counsel shall seek approval of fees by either complying with LBR 2016-1(c) or by filing and serving a motion under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

The plan filed March 29, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

30. 16-20564-B-13 KATRINA NOPEL
PLC-4 Peter L. Cianchetta

MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTOR'S ATTORNEY
4-24-17 [59]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

FEES AND COSTS REQUESTED

Peter L. Cianchetta ("Applicant"), the attorney to Chapter 13 Debtor makes a first and request for the allowance of $5,320.00 in fees and $413.45 in expenses. After application of the $310.00 paid to counsel for the filing fee, a total of $5,423.45 in additional compensation is sought by this motion. The Debtor has opted out of the Guidelines (dkt. 5, p. 1).] The period for which the fees are requested is for February 1, 2016 through April 24, 2017.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 62.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed

> within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate and reasonable.

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

Fees	$5,320.00
Costs and Expenses	$103.45

The motion is ORDERED GRANTED for fees of $5,320.00 and costs and expenses of $103.45.

31. 16-28566-B-13 ANTONIO VALENZUELA AND MARIA SEPULVEDA
Thomas O. Gillis

MOTION TO CONFIRM AMENDED PLAN
4-6-17 [26]

Tentative Ruling: The Motion to Confirm the First Amended 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 first amended plan.

First, the Trustee cannot assess the feasibility of the plan as the Debtors have not submitted a declaration as required by the code in support of the motion to confirm.

The Debtors responds that another document was inadvertently uploaded to the docket in place of the Debtors' declaration. The Debtors have now uploaded the declaration and served it on all creditors.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 6, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

32. 17-20969-B-13 ALPHONSO BARBER MOTION TO CONFIRM PLAN
SDB-1 W. Scott de Bie 4-24-17 [18]
Thru 33

Tentative Ruling: 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 not confirm the second amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,426.00, which represents approximately 2 plan payments. 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, due to the delinquency in plan payments, the Trustee defaulted on mortgage payments to creditor HSBC Mortgage. The amended plan does not propose to cure the delinquency.

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

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

33. 17-20969-B-13 ALPHONSO BARBER
SDB-1 W. Scott de Bie

COUNTER MOTION TO DISMISS CASE
5-23-17 [31]

Tentative Ruling: The motion is 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

34. 16-25470-B-13 MICHAEL HANKS MOTION TO CONFIRM PLAN
MET-3 Mary Ellen Terranella 4-25-17 [55]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 25, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 16-25175-B-13 CHARLES WILLIAMS
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CLAIM OF FAST AUTO AND PAYDAY LOANS, CLAIM NUMBER 13
4-7-17 [20]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 13 of Fast Auto and Payday Loans and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee("Objector"), requests that the court disallow the claim of Fast Auto and Payday Loans ("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $299.63. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 30, 2016. Notice of Bankruptcy Filing and Deadlines. The Creditor's Proof of Claim was filed December 1, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six

> circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

36. 12-35084-B-13 ERLINDA SWANEGAN MOTION TO DEEM MORTGAGE CURRENT
KWS-2 Scott J. Sagaria 4-21-17 [103]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

Debtor's Motion to Deem Mortgage Current 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 and award attorney's fees; however, for the reasons explained below the hearing will be continued solely for the purpose of allowing counsel to supplemental the record with appropriate billing records and exhibits.

Debtor requests: (1) an order deeming her mortgage payment post-petition current as of the date of this motion and that Nationstar be prohibited from adding to the loan any fees or expenses associated with this motion; and (2) an award of the reasonable attorneys' fees and costs necessary to prosecute the motion, as to be determined by the Court upon the filing of a supplemental accounting and declaration and once approved payable directly to the Debtor's attorney; Debtor has provided current fees necessary to prepare motion in the amount of $6,252.00.

The Chapter 13 Trustee filed a statement of nonopposition. Dkt. 114.

Discussion

On July 28, 2016, the Chapter 13 Trustee filed a Notice of Final Cure Payment to Nationstar indicating that Nationstar's claim for arrears had been cured through completion of Debtor's Chapter 13 plan. FRBP 3002.1(f); dkt. 85. On August 18, 2016, Nationstar filed a Response to Notice of Final Cure Payment checking the box that it "Agrees that Debtor(s) has paid in full the amount required to cure the default on Creditor's claim" and "Agrees that Debtor(s) is current with respect to all payments consistent with §1322(b)(5) of the Bankruptcy Code." Ex. A, Dkt. 114.

The Debtor was discharged on October 11, 2016. Dkt. 95. Debtor subsequently received a letter of default from Nationstar stating that as of November 28, 2016 the amount of the debt owed is $1,482.26 for October 1, 2016. Ex. B, Dkt. 108.

Debtor reviewed an online report of the monthly posted payments that is accessible through Nationstar's website. It shows that Nationstar was applying payments at the amount of $1,577.29 although the stated amount to be paid

pursuant to the most updated notice of mortgage payment change was $1168.13.5. Ex. E, Dkt. 108.

On April 3, 2017, counsel for Debtor sent a letter to Nationstar's attorney who filed the response to the final cure payment. To date counsel for Debtor has not
received a response to discuss the discrepancy in accounting. Ex. I, Dkt. 108.

Debtor's counsel spent 15.83 hours preparing this motion for the Debtor ($6,252.00 in attorney's fees). Ex. J, Dkt. 108.

The Trustee's final report indicates that the trustee made 60 post-petition on-going mortgage payments to Nationstar in the amounts claimed in the Plan, Proof of Claim, and/or Notices of Mortgage Payment Change. Dkt. 114.

Given the ample evidence (including Nationstar's proof of claim, the Trustee's Final Report, Nationstar's written acknowledgment of arrearage cure, and the Debtor's unanswered correspondence with Nationstar regarding accounting discrepancies), the court is convinced that Debtor was current on mortgage payments to Nationstar as of the date of the filing of this motion: April 21, 2017.

Further, it appears that Naitonstar's accounting discrepancies caused the filing of this motion and related attorney fees. Thus the court shall award attorney's fees in the amount of $6,252.00 to Kyle W. Schumacher, attorney for the Debtor.

Although the motion is granted, both as to the relief requested and the award of attorney's fees, this matter will be continued to June 20, 2017, at 1:00 p.m. to permit counsel to supplement the record with the exhibits referenced in the motion and related declarations. The exhibits filed at dkt. 108 appear as blank pages on both the court's docket and PACER. Counsel shall file and serve the exhibits as they appear on dkt. 108 by June 13, 2017.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

37. 16-23189-B-13 ANTHONY DAY MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 4-27-17 [71]
Thru #38

Final Ruling: No appearance at the June 6, 2017 hearing is required.

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

The court's decision is to permit the requested modification and confirm the 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 27, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor/s shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 16-23189-B-13 ANTHONY DAY
PGM-4 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
5-9-17 [76]

Tentative Ruling: The Application for Additional Attorney 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)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("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, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 5 ("Order Confirming Plan"). Applicant now seeks additional compensation in the amount of $800 in fees and $0 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 80.

The Chapter 13 Trustee objects to payment of fees to Applicant in the amount of $375 related to the filing of the Motion to Modify Plan on April 27, 2017. The Trustee contends that the April 27 modification was not necessary to the administration of the estate. Further, the Trustee objects to payment of fees in the amount of $150 for preparing and sending an orders to the Trustee and Debtor related to the April 27 modification. In sum, the Trustee contends that additional fees awarded to applicant should not exceed $435.

The Applicant filed a response to the Trustee's opposition requesting that additional fees in the amount of $435 be granted.

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).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would request a modification of the confirmed chapter 13 plan in order to facilitate early payoff of the case. 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 Debtor, estate, and creditors

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

Additional Fees	$435
Additional Costs and Expenses	$0

The motion is ORDERED GRANTED for additional fees of $435 and costs and expenses of $0.

39. 14-31992-B-13 KREGG RAY
JHW-1 Scott J. Sagaria

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-17 [38]

DAIMLER TRUST VS.

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Motion for Relief From the 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)(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 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.

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Mercedes Benz C250, VIN ending in 7187 (the "Vehicle"). The moving party has provided the Declaration of Elizabeth Lugo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Elizabeth Lugo Declaration provides testimony that the vehicle was surrendered on March 30, 2017 due to the death of the Debtor.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $13,956.69, as stated in the Declaration.

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 since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Daimler Trust, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement

under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

40. 16-27996-B-13 VICKI NAZAROFF MOTION TO CONFIRM PLAN
RJM-1 Rick Morin 4-12-17 [27]

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Filed April 12, 2017 has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 12, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. 17-22198-B-13 ERIN VIEIRA-ANDERSON
JPJ-1 Edward A. Smith
Thru #42

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-17 [14]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 does not comply with 11 U.S.C. §§ 1322 and 1325(b)(1)(B) as the debtor's projected disposable income is not being applied to make payments to unsecured creditors.

Second, the Debtor is improperly taking deductions on her Form 122C-1. The Debtor is taking several marital adjustments on Line 13 for the non-filing spouse's student loans, 401k contributions, and credit card payments. The marital adjustment is for expenses that are not regularly paid as household expenses as the aforementioned appear to be. Without these deductions, Debtor has more disposable income to devote to the plan. for marital adjustment expenses.

Third, 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).

The plan filed March 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

42. 17-22198-B-13 ERIN VIEIRA-ANDERSON
JPJ-2 Edward A. Smith

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-11-17 [17]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 6, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Debtor's Claim of Exemption, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

43. 17-23289-B-13 CONCETTA MANZANO
EJS-1 Eric John Schwab

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
5-25-17 [13]

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

The court's decision is to 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) 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 September 30, 2016, after Debtor defaulted on chapter 13 plan payments (case no. 15-20273, dkt. 75 Notice of Entry of Dismissal). 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 filed the instant case to stop a foreclosure. Debtor contends that her current plan is viable given that her spouse is now employed and receives an average monthly gross income of $5,800.

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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.