UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 20, 2017 at 1:00 p.m.

1.	16-25704-B-13 JPJ-1	MERCEDITA HERNANDEZ W. Scott de Bie	OBJECTION TO CLAIM OF CASHNETUSA COM, CLAIM NUMBER 15 5-4-17 [22]

Final Ruling: No appearance at the June 20, 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. 15 of CashNetUSA.com and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of CashNetUSA.com ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,935.22. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 28, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 20. The Creditor's Proof of Claim was filed January 17, 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 court will enter an appropriate minute order.

2. 17-22712-B-13 DENISE DOXIE
Pro Se

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
6-1-17 [20]

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

The court's decision is to overrule the objection in part and sustain the objection in part.

Denise Doxie, the Chapter 13 Debtor, objects to the Notice of Post-petition Mortgage Fees, Expenses, and Charges filed by secured creditor Lakeview Loan Servicing. Dkt. 16. The Notice contains charges for filing a proof of claim, mailing expenses, and reviewing the Debtor's plan.

Bankruptcy Rule 3002.1(c) provides that a holder of the claim may file a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence.

The court will allow the mailing expenses of $6.06. *See* dkt. 16. However, Lakewview Loan Servicing has not stated with specificity a basis for the award of attorneys' fees in connection with the filing of a proof of claim on May 17, 2017, or the review of Debtor's plan. Therefore, Creditor is allowed $6.06 in expenses and disallowed $650.00 in fees.

The court will enter an appropriate minute order.

3. 15-24115-B-13 TERRICINA MIMS MOTION TO INCUR DEBT
TAG-8 Ted A. Greene 6-6-17 [122]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Application to Incur Debt 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 and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase a 2016 Dodge Journey, the total purchase price of which is $16,300, with monthly payments of $590.00.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court also notes that the motion states that the Debtor intends to convert this chapter 13 case to a chapter 7 case since the only claim being paid through her plan is for her old car which has now been surrendered. Based on that representation, the Debtor shall convert this case to chapter 7 within seven (7) days after the entry of the order granting the motion to incur debt; otherwise, the case may thereafter be converted on the Trustee's ex parte application.

The court will enter an appropriate minute order.

4. 12-28119-B-13 GUSTAVO/SAMANTHA GUZMAN MOTION TO MODIFY PLAN
SS-8 Scott D. Shumaker 5-16-17 [113]

Final Ruling: No appearance at the June 20, 2017 hearing is required.

The Motion to Confirm 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 May 16, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

5. 17-23520-B-13 REV ANDERSON
KG-1 Kayla M. Grant

MOTION TO EXTEND AUTOMATIC STAY
5-26-17 [8]

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

The court's decision is to 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. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 8, 2017 (case no. 15-20565, dkt. 159 Notice of Entry of Dismissal), after Debtor became liable for claims post-petition after filing the Chapter 13 case which would be post-petition debt not included in the first filing. The Debtor would have a difficult time paying these claims along with payment into the Chapter 13 plan. Hence, he sought a dismissal in order to re-file a case including those recently incurred medical bills. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that he re-filed his chapter 13 case in order to reorganize significant debts incurred after filing the prior case.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court will enter an appropriate minute order.

6. 17-23022-B-13 CHRISTOPHER FOWLER
BAW-1 Dale A. Orthner

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
5-26-17 [14]

SPECIALIZED LOAN SERVICING LLC VS.

Tentative Ruling: The Motion for Relief From Automatic Stay and Co-Debtor 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 and permit the filing of a motion for attorney's fees and costs.

Specialized Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 605 Woodland Ave., Woodland, California (the "Property"). Movant has provided the Declaration of S. Ellis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ellis Declaration states that there are 0 post-petition defaults. Additionally, there are 83 pre-petition payments in default, with a total of $247,849.36 in pre-petition payments past due.

Opposition has been filed by Christopher Fowler, Debtor, asserting that equity in the property adequately protects Movant and that the Debtor intends to cure the debt owed to Movant through his proposed Chapter 13 plan.

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 $247,849.36 (including $247,849.36 secured by Movant's first deed of trust) as stated in the Ellis Declaration and Schedule D filed by the Debtors. The value of the Property is determined to be $291,000.00 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 post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

By Movant's own admission, there is equity in the Debtor's property so the court will not grant relief under § 362(d)(2). However, at 3.48% ($9,750.84/$280,000), the equity cushion created by existing equity is insufficient which means Movant's interest in the Property is not adequately

protected in the absence of payments. *See In re Strause*, 97 B.R. 22 (Bankr. S.D. Cal. 1989) (considering the debtors' poor payment history on secured notes, the court determined a 6% equity cushion was insufficient to adequately protect the creditor despite the debtor's avowed intent to keep the property securing the notes).

Nevertheless, Debtor opposes the motion stating that his plan (confirmation hearing set for July 3, 2017) proposes to pay all arrears that are owed to Movant on its secured claim and it also proposes to resume regularly scheduled mortgage payments. Debtor's argument is not persuasive.

It appears that the Debtor's plan is not confirmable. The Trustee has objected to confirmation of the Debtor's plan and the Trustee's objections suggest that the Debtor has engaged in bad faith conduct by concealing and/or omitting from the Schedules (1) the amount of a potential tax refund and (2) the value of a pending lawsuit. The secured creditor with a lien on the Debtor's property has also objected to confirmation of the Debtor's plan on the basis the plan impermissibly modifies its rights under § 1322(b)(2) because it fails to provide for the payment of all arrears in full. The court will not confirm a plan that violates § 1322(b)(2). Moreover, increasing an arrears payment may create feasability problems for the Debtor. In short, it appears that the plan set for hearing on July 3, 2017, is not likely to be confirmed on July 3, 2017.

It also is somewhat disingenuous for the Debtor to oppose the motion on the basis that he intends and/or has the ability to cure over 83 months of arrears and resume regular monthly mortgage payments in a plan when the Debtor is unwilling and/or apparently unable to timely pay his first $79.00 filing fee installment. [Dkt. 28]. Additionally, there have been five prior "promises" to repay arrears and make current monthly mortgage payments for the Property and none were fulfilled.[1] To put it bluntly, given the history of filings affecting the Property and the absence of an intent or ability to successfully prosecute any of those cases beyond a few months, the court does not believe the Debtor's statement that he can or will pay arrears and make regular monthly mortgage payments. That means there is a reasonable likelihood that this case - the sixth affecting the Property - will end in yet another dismissal only to be followed by a seventh bankruptcy filing where the Debtor again promises to pay arrears and make regular monthly mortgage payments.

On the other hand, the court is persuaded that Movant has established cause, including a lack of adequate protection, under § 362(d)(1). Therefore, the motion will be granted and the automatic stay of § 362(a) (and any co-debtor

---

[1] #1 Ch. 13 filed February 26, 2010, by Kandice Kapri Fowler, case no. 10-24757. Dismissed July 14, 2011, for failure to make plan payments.
#2 Ch. 13 filed November 11, 2011, by Kandice Kapri Fowler, case no. 11-46168. Dismissed June 5, 2012, for failure to make plan payments.
#3 Ch. 13 filed May 14, 2015, by Kandice Kapri Fowler, case no. 15-23942. Dismissed July 9, 2015, for failure to timely file documents.
#4 Ch. 13 filed September 23, 2015, by Kandice Kapri Fowler, case no. 15-27441. Dismissed January 27, 2016, for failure to make plan payments.
#5 Ch. 13 filed February 13, 2017, by Kandice Kapri Fowler, case no. 17-20885. Dismissed May 12, 2017, for failure to pay the filing fee.

stay of § 1301(a)) will be ordered terminated to permit Movant to exercise its rights to its collateral under applicable nonbankruptcy law, including foreclosure.

The court will also grant relief under § 362(d)(4). Relief under § 362(d)(4) is appropriate "if the court finds that the filing of the petition was part of a scheme to delay, hinder, **or** defraud creditors that involved . . . multiple bankruptcy filings affecting such property." 11 U.S.C. § 362(d)(4)(B) (emphasis added). There no doubt have been multiple filings that have affected the Property and Movant's interest in it - six including this case to be precise.

The number of filings affecting the Property, the lack of intent or ability to successfully prosecute any of those cases and yet (repeatedly) filing them nonetheless, and the dismissal of each case very shortly it was filed is indicative of an intent to hinder Movant by a scheme involving the improper use of the bankruptcy process and bad faith filings. It also appears that the Debtor strategically filed this chapter 13 case knowing that his wife would be unable to sustain the automatic stay based on the dismissal of her last prior case. Relief is appropriate under § 362(d)(4)(B).

Therefore, for the foregoing reasons, the court shall issue an order **GRANTING** relief under § 362(d)(1) and terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property. The court shall also issue an order **GRANTING** relief under § 362(d)(4)(B).

Attorneys' Fees Requested

Because Movant has established that there is equity in the Property and value in excess of the amount of Movant's claim as of the commencement of this case, Movant may file a separate motion for attorney's fees and costs incurred in matters related to its stay relief motion.

Any motion for attorney's fees and costs shall be filed within fourteen (14) days of the entry of the order granting this stay relief motion and shall be set on the court's calendar under Local Bankruptcy Rule 9014-1(f)(1).

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

7. 17-21139-B-13 ELIZABETH EIDE
PSB-2 Pauldeep Bains

CONTINUED MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR MOTION TO EXCUSE DEBTOR FROM COMPLETING POST PETITION INSTRUCTIONAL COURSE, MOTION TO EXCUSE DEBTOR FROM COMPLETING THE 11 U.S.C. 1328 CERTIFICATE OR CERTIFICATE OF CHAPTER 13 DEBTOR RE: 11 U.S.C. 522 (G) EXEMPTIONS
4-17-17 [30]

Final Ruling: No appearance at the June 20, 2017 hearing is required.

The Motion to Excuse Debtor Elizabeth Eide from Completion Briefing about Credit Counseling, Post-Petition Instructional Course, & the 11 U.S.C. § 1328 Certificate or Certificate of Chapter 13 Debtor Re: 11 U.S.C. § 522(q) Exemptions 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).

The court's decision is to grant the Motion.

This motion requests to waive the requirement of Elizabeth Eide ("Debtor") from completion of the credit counseling course, post-petition instructional management course, and the requirement to file 11 U.S.C. § 1328 Certificate or the Certificate of Debtor regarding 11 U.S.C. § 522(q) Exemptions. However, the motion does not request to substitute in Don C. Mokler, attorney-in-fact to Debtor. A power of attorney was submitted with the petition. *See* dkt. 1. The petition was signed by Mr. Mokler.

At the hearing on May 16, 2017, The court continued this matter to June 20, 2017, at 1:00 p.m. to allow the Movant to file an amendment to the power of attorney to explicitly state that Mr. Mokler may file for bankruptcy on behalf of the Debtor by June 13, 2017. The Docket reflects that such amendment has been filed. *See* Dkt. 45, Ex. A.

Given that a durable power of attorney was filed to allow Mr. Mokler to prosecute the Debtor's bankruptcy case on her behalf due to medical incapacity, the court shall waive the requirement to file 11 U.S.C. § 1328 Certificate and the Certificate of Debtor regarding 11 U.S.C. § 522(q) Exemptions.

The court will enter an appropriate minute order.

8. 14-26446-B-13 TODD/DENISE BEINGESSNER MOTION TO MODIFY PLAN
MJD-2 Scott J. Sagaria 5-16-17 [122]

Tentative Ruling: Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the requested modification and not confirm the modified plan.

First, the plan payment in the amount of $3,845 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 $6,115.33. The plan does not comply with Section 4.02 of the mandatory form plan.

Debtors' reply states that the plan overstated a monthly mortgage payment, which had been reduced by $2,000. Specifically, Debtors contend: "Debtors respectfully request that the Court allow additional language in the Order modifying the Chapter 13 plan amending the "$4,962.69" to "$2,962.69" which Debtors' counsel clearly intended to input. Debtors' counsel believes the plan will fund when the appropriate ongoing monthly contract installment amount reads $2,962.69." Dkt. 133, p. 2.

A reduction in expenses by $2,000 would result in the aggregate of the monthly amounts plus the Trustee's fee in the amount of $4,115.33. It appears that the proposed monthly plan payment in the amount of $3,845 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 modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

9.	16-25346-B-13 JPJ-1	ERIKA VLACH Michael O'Dowd Hays	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS LLC/DEPARTMENT OF EDUCATION LOAN SERVICING, CLAIM NUMBER 3 5-4-17 [38]

Final Ruling: No appearance at the June 20, 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. 3 of Navient Solutions LLC/ Department of Education Loan Servicing, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions LLC/ Department of Education Loan Servicing ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $57,037.10. 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 January 11, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 17. The Creditor's Proof of Claim was filed April 28, 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 court will enter an appropriate minute order.

10. 17-21647-B-13 WILLIAM ANDERSON MOTION TO CONFIRM PLAN
PLC-1 Peter L. Cianchetta 5-1-17 [18]

Final Ruling: No appearance at the July 20, 2017 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on May 1, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

11. 16-23659-B-13 ANDREY KIRICHENKO
JPJ-3 Mark Shmorgon

OBJECTION TO CLAIM OF TIRECO TDX, CLAIM NUMBER 4
5-4-17 [58]

Final Ruling: No appearance at the June 20, 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. 4 of Tireco TDX, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Tireco TDX ("Creditor"), Proof of Claim No. 34 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,948.36. 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 October 5, 2016 Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's Proof of Claim was filed April 18, 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 court will enter an appropriate minute order.

12.	16-25468-B-13 PSB-4 **Thru #13**	ROBERT DANIEL, AND DIANNA DANIEL Pauldeep Bains	CONTINUED MOTION TO MODIFY PLAN 4-11-17 [53]

Final Ruling: No appearance at the June 20, 2017 hearing is required.

The Motion to Confirm Debtors' First Modified Chapter 13 Plan Filed on April 11, 2017 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 11, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. 16-25468-B-13 PSB-5 — ROBERT DANIEL, AND DIANNA DANIEL — Pauldeep Bains — MOTION TO INCUR DEBT — 5-19-17 [64]

Final Ruling: No appearance at the June 20, 2017 hearing is required.

The Motion to Incur Post-Petition Debt 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 permit the loan modification requested.

Debtors seeks court approval to incur post-petition credit. Select Portfolio Servicing, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $2,126.17 a month to $1,813.98 a month. The modification will provide for a 3.625% interest rate with a balloon payment in the amount of $242,570.43 upon maturation (03/01/2037).

The motion is supported by the Joint Declaration of Robert Daniel and Dianna Daniel. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms. The Declaration affirms the Debtor's' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

14. 13-24473-B-13 MJD-1 | ROBERT/CONNIE COLLINS
Scott Sagaria | MOTION FOR SUBSTITUTION AND/OR MOTION FOR WAIVER OF THE CERTIFICATION REQUIREMENTS FOR ENTRY OF DISCHARGE IN A CHAPTER 13 CASE
5-23-17 [91]

Final Ruling: No appearance at the January 20, 2017 hearing is required.

The Notice of Death and Notice of Motion and Motion for Substitution and Waiver of the Certifaction requirements for Entry of Discharge in a Chapter 13 Case has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-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 substitute the surviving Debtor, who is appointed representative of the estate, to continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Robert Early Collins gives notice of death of his wife and Co-Debtor Connie Marie Collins and requests the court substitute Robert Early Collins in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. The instant case has been pending for over four (4) years and Debtor has completed approximately forty-nine (49) of his sixty (60) monthly payments to the trustee as provided for
by the trustee's 13Network website. With the majority of the payments being made and a surrendered property, it would be in the best interest of all parties to proceed with the bankruptcy in earnest and allow a discharge of the deceased debtor.

The court will enter an appropriate minute order.

15.	15-27180-B-13 JPJ-2	VINCENT/DEANNA MOORE Peter G. Macaluso	OBJECTION TO CLAIM OF USDA RURAL HOUSING SERVICE, CLAIM NUMBER 23 AND/OR OBJECTION TO CLAIM OF USDA RURAL HOUSING SERVICE, CLAIM NUMBER 24 5-4-17 [40]

Final Ruling: No appearance at the June 20, 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 Nos. 23 & 24 of USDA Rural Housing Service, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of USDA Rural Housing Service ("Creditor"), Proof of Claim Nos. 23 & 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $98,960.44. 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 government unit was March 9, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 8. The Creditor's Proof of Claim was filed July 12, 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 court will enter an appropriate minute order.

16. 16-23986-B-13 SUSAN ZIMMERMAN MOTION TO SELL
MMM-1 Mohammad M. Mokarram 6-6-17 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Sell 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.

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

The Bankruptcy Code permits a Chapter 13 debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 341 Messina Drive, Sacramento, California ("Property").

The proposed purchasers of the property Stephanie Ogren and Carl Ogren have agreed to purchase the Property for $525,000.00. Debtor will use the gross sale proceeds to pay off all liens, closing costs, and realtor fees, leaving net proceeds in the approximate amount of $126,504.36 to be deposited with the Chapter 13 Trustee.

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

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

The court will enter an appropriate minute order.

17. 13-27992-B-13 SUSAN MAGLIANO-BASSOFF MOTION TO MODIFY PLAN
TJW-3 Timothy J. Walsh 5-8-17 [81]

Final Ruling: No appearance at the June 20, 2017 hearing is required.

The Motion to Confirm Debtor's First Modified Chapter 13 Plan Filed May 8, 2017 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 May 8, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18. 12-35084-B-13 ERLINDA SWANEGAN
KWS-2 Kyle Schumacher

CONTINUED MOTION TO DEEM MORTGAGE CURRENT
4-21-17 [103]

Final Ruling: No appearance at the June 20, 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. The court continued the hearing held June 6, 2017 solely for the purpose of allowing counsel to supplemental the record with appropriate billing records and exhibits.

The docket reflects that counsel has supplemented the record with appropriate billing records and exhibits. Dkt. 117.

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. 117.

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. 117.

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. 117.

Debtor's counsel spent 15.83 hours preparing this motion for the Debtor ($6,252.00 in attorney's fees). Ex. J, Dkt. 117.

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.

The court will enter an appropriate minute order.

19. 17-23765-B-13 STEVEN ADAMS
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
6-13-17 [12]

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

The court's decision is to 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 May 12,2016, after Debtor failed to file requisite documents. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the instant case was filed primarily in order to cure pre-petition arrears owed on the primary residence, satisfy tax debt, and retain property. The debtor is disabled, but receives Social Security Disability income.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court will enter an appropriate minute order.