UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 3, 2018 at 1:00 p.m.

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1. 13-21400-B-13 DEBORAH SHEIDLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
EGS-2 Peter G. Macaluso — 5-31-18 [104]

BAYVIEW LOAN SERVICING, LLC
VS.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

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

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

Bayview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3201 Shasta Way, Sacramento, California (the "Property"). Movant has not provided any declaration to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. Movant has not filed a verified statement of all post-petition payments and other obligations that have accrued and all payments received post-petition, the dates of the post-petition payments, and the obligation(s) to which each of the post-petition payments was applied as required by Local Bankr. R. 4001-1(b)(1)(A).

Without a declaration, the motion is denied without prejudice.

The court will enter an appropriate minute order.

2. 18-22000-B-13 LOUIE/SHARDALAI GILLIGAN MOTION TO CONFIRM PLAN
RWH-1 Ronald W. Holland 5-18-18 [26]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated May 16, 2018, has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court 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 May 16, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

3.	18-22404-B-13 JPJ-1	ALICE SHARP Steele Lanphier	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-1-18 [17]

CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/05/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

4.	17-25405-B-13 JPJ-1	MICHELLE VAN DYKE Peter G. Macaluso	OBJECTION TO CLAIM OF CHAPTER HOLDINGS, LLC FBO, CLAIM NUMBER 10 5-7-18 [20]

Final Ruling: No appearance at the July 3, 2018, 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 Chapter Holdings LLC FBO and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Chapter Holdings LLC FBO ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $306.30. 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 20, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed January 7, 2018.

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 fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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.

5. 18-23608-B-13 RAJESH KAPOOR
RJ-3 Richard L. Jare

MOTION TO IMPOSE AUTOMATIC STAY
6-19-18 [32]

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

The court's decision is to deny the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's fifth bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on November 30, 2017, for failure to timely file documents (case no. 17-2765, dkt. 26). The Debtor's second bankruptcy case was dismissed on March 2, 2018, upon Debtor's request for voluntary dismissal (case no. 17-28236, dkt. 37). The Debtor's third bankruptcy case was dismissed on May 8, 2018, upon Debtor's request for voluntary dismissal (case no. 18-21550, dkt. 41). Finally, the Debtor's fourth bankruptcy case was dismissed on June 4, 2018, for failure to timely file documents (case no. 18-23046, dkt. 14). The present and fifth bankruptcy case was filed on June 8, 2018.

Opposition by Creditor

Creditor Rashmi Sharma opposes Debtor's motion on grounds that Debtor is a serial bankruptcy filer, Debtor has not demonstrated any significant change in financial or personal circumstances from his prior cases, and the Debtor has not adequately rebutted the presumption of bad faith.

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor explains that the previous cases and present case were filed to prevent judgment creditor and former wife Rashmi Sharma from imposing wage garnishment. Debtor asserts that he owes no spousal or child support but that Ms. Sharma is holding a substantial property equalization money judgment stemming from a divorce proceeding. Debtor states that his circumstances have changed because he has hired Richard Jare as his attorney. Although Debtor was represented by legal counsel in some of his prior bankruptcy cases, Debtor contends that he was unaware that the plans and documents filed by the prior attorneys were inadequate. Debtor also asserts that he had the mistaken belief that it was normal to file serial bankruptcies and did not know that the court may consider the frequency of bankruptcy filings abusive. The court considers the Debtor's preceding assertion ridiculous, frivolous, and bordering on the

sanctionable.

The court is not persuaded that the Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D). While this is the fifth bankruptcy case pending within the last year, Debtor has sought bankruptcy relief a total of seven times and even received a discharge in his first bankruptcy (case no. 08-27971). Although the first bankruptcy was a Chapter 7, Debtor cannot be said to be unfamiliar with the duties imposed on a debtor. Additionally, the court is not persuaded that the lack of success in some of the prior cases was due to inadequately filed plans by the attorneys because these attorneys are bankruptcy attorneys with knowledge of the bankruptcy process.

The Debtor has offered no explanation from which the court can conclude that his financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed.

The motion is denied without prejudice and the automatic stay is not imposed.

The court will enter an appropriate minute order.

6. 15-28611-B-13 MARY COBOS MOTION TO MODIFY PLAN
MC-3 Muoi Chea 5-18-18 [70]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Confirm Second Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 18, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

7. 16-21514-B-13 CHERRONE PETERSON MOTION TO MODIFY PLAN
PGM-5 Peter G. Macaluso 5-24-18 [128]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 24, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following: "Section 2.01 should read $9,870.00 through May 2018, and $500.00 x 34 months starting June 2018."

The plan cannot be effectively administered since the plan duration is unclear. Section 2.03 of the plan states a plan duration of 60 months but the plan terms in Section 2.01 total 61 months. The plan proposes in Section 2.01 a total of $9,870.00 through May 2018, which is month 26, followed by 35 additional monthly payments starting in June 2018, which is month 27.

Debtor filed a response stating that Section 2.01 should read $9,870.00 through May 2018, and $500.00 x 34 months starting June 2018. This will correct the plan duration to 60 months. Debtor requests that this change be included in the order confirming.

Provided that this change is made in the order confirming, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

8. 16-25614-B-13 KSW-1 BEVERLY BAKER HARRIS
Kyle Schumacher

MOTION TO EMPLOY TEAM 1 REALTY AS BROKER(S)
5-31-18 [79]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Application by Debtor for Approval of Real Estate Broker (Team Realty) for Sale of Real Property 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor seeks to employ real estate broker Ty Leon-Guerrero of Team 1 Realty, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and 11 U.S.C. § 327(a). The Debtor asserts that employment of Team 1 Realty is necessary to assist her in establishing the fair market value of property located at 3259 Glen Abbey Drive, Fairfield, California ("Property") and to market and sell the Property for the benefit of the Debtor and all creditors in interest.

Broker Ty Leon-Guerrero testifies that he is very familiar with the real estate market in the area and will represent the Debtor in marketing and selling the Property. Mr. Leon-Guerrero testifies that he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Local Rule 2014-1 states that to insure public confidence in the integrity of the bankruptcy process, the verified statement that must accompany an Application for Employment of Professional Persons pursuant to Fed. R. Bankr. P. 2014(a) shall, after disclosure of any actual connections, close with the statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party-in- interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications for Employment which are not accompanied by a verified statement containing such a statement may be denied without prejudice.

Taking into account all of the relevant factors in connection with the employment and compensation of Mr. Leon-Guerrero of Team 1 Realty, considering the declaration demonstrating that Mr. Leon-Guerrero does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the

court grants the motion to employ Mr. Leon-Guerrero of Team 1 Realty as broker for the Debtor on the terms and conditions set forth in the Residential Listing Agreement filed as dkt. 82. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court will enter an appropriate minute order.

9. 14-25618-B-13 SHELDON/MELANIE HIRSCH MOTION TO COMPEL
DJC-12 Diana J. Cavanaugh 6-12-18 [187]
See Also #40

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to (1) Compel BSI Financial Inc. to Comply with FRBP 3002.1 and (2) Compel BSI Financial Inc. to File Written Notification with the Court and/or Chapter 13 Trustee Regarding the Current Status of Pre-petition Arrears Owing 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 deny the motion without prejudice.

Introduction

This matter illustrates one of the reasons why this court will not confirm a Chapter 13 plan with "Additional Provisions" that provide for adequate protection payments pending a loan modification instead of the contractual monthly payment on a claim secured only by a security interest in real property that is the debtor's principal residence. In addition to this court's view that such "Additional Provisions" are an impermissible modification under § 1322(b)(2), making adequate protection payments in an amount different from the contractual monthly mortgage payment without the lender's consent leads to the problem discussed below.

Background

Debtors Sheldon and Melanie Hirsch ("Debtors") reside at 8149 Glen Alta Way, Citrus Heights, California ("Property"). BSI Financial, Inc. ("Creditor"), as successor to Citimortgage, Inc., holds the first deed of trust on the Property.

The Debtors filed a Second Amended Plan filed on December 11, 2014. Dkt. 162. Instead of the contractual monthly payment, the Second Amended Plan includes "Additional Provisions" that provide for monthly adequate protection payments to the Creditor pending a loan modification from the Creditor. The amount of the monthly adequate protection payment differs from the Debtors' contractual monthly mortgage payment. The Second Amended Plan was confirmed on March 4, 2015. Dkt. 171.

The Debtors' request for a loan modification was recently denied. And because the Debtors made adequate protection payments instead of the regular contractual monthly payment pending consideration of that loan modification, the Debtors now do not know how much of their mortgage they paid and what they owe on it. So to fix that problem the Debtors have asked the court to compel Creditor to tell them what the loan balance is (including arrears) and to do that by compelling Creditor to file a Notice of Payment Change under Federal Rule of Bankruptcy Procedure 3002.1.

For the reasons explained below, the Debtors' request will be denied without prejudice.

Discussion

In relevant part, Bankruptcy Rule 3002.1 states as follows:

> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

Fed. R. Bankr. P. 3002.1(b).

As the court reads Bankruptcy Rule 3002.1, there must first be a "change in [a] payment amount" before a creditor is obligated to give notice of a "change in the payment amount[.]" Put another way, the obligation to file and serve a Notice of Payment Change arises only *after* a payment amount has actually changed. And therein lies the Debtors' first problem - the Debtors' mortgage payment has not changed. In fact, the Debtors' mortgage payment will effectively change only if a modified plan is confirmed. *See* 11 U.S.C. § 1329(b)(2) (plan as modified becomes plan unless modification is disapproved). And at the earliest, that cannot occur until August 7, 2018.[1]

The Debtors' motion also appears to shift the burden of changing the monthly mortgage payment from the Debtors to Creditor when § 6.05 of the Additional Provisions of the Second Amended Plan places that burden on the Debtors. Section 6.05 states as follows:

> If Citimortgage Inc. determines that a loan modification is not approved, it shall communicate the denial of a modification in writing to the Debtor(s) and counsel for the Debtors by USPS First Class Mail, postage prepaid. **In the event of a denial, the Debtors shall have fourteen days from the mailing of the denial of the modification to file a modified plan and motion to confirm modified plan to provide for payment of Citimortgage Inc., or alternatively to provide for the surrender of the collateral of Citimortgage Inc.**

Dkt. 162 at § 6.05 (emphasis added).

Finally, the court is not persuaded that a Notice of Payment Change under Rule 3002.1, even if ordered, would have any effect under the present circumstances of this case. That is because § 6.09 of the Additional Provisions of the Second Amended Plan states as follows: "If Citimortgage, Inc. files a Notice of Mortgage Payment Change, the Trustee shall disregard the notice and make payments pursuant to the Plan." Dkt. 162 at § 6.09.

The court is not unsympathetic to the Debtors' conundrum. However, the court declines to compel Creditor to perform an act Creditor apparently is not yet obligated to perform or, if compelled, would have no effect in this case.[2]

Conclusion

For all the foregoing reasons, the Debtors' motion to compel will be denied without prejudice.

The court will enter an appropriate minute order.

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[1] The Debtors filed a modified plan and motion to confirm it on June 26, 2018. Dkts. 195-198. The hearing on that motion and the plan confirmation hearing are set for August 7, 2018.

[2] Perhaps the better way for the Debtors to proceed if Creditor refuses to cooperate and provide an updated accounting of their mortgage loan would be under Bankruptcy Rule 2004.

10. 17-28118-B-13 VICTOR CATANZARO
JPJ-1 Mikalah R. Liviakis

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
6-1-18 [19]

DISMISSED: 6/29/18

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The case having been dismissed, the motion to convert or in the alternative dismiss case is denied as moot.

The court will enter an appropriate minute order.

11. 18-22324-B-13 DEBRA THOMPSON
JPJ-1 Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-4-18 [19]

CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/05/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

12.	18-22724-B-13 JPJ-1	ANGELO NOLASCO AND DEBRA RODRIQUEZ-NOLASCO Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON 6-6-18 [16]

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

The plan does not comply with 11 U.S.C. § 1325(a0(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Schedule A/B shows two different amounts for the value of the Debtors' real property located at 1764 Allenwood Circle, Lincoln, California. The amount listed under the "current value of the entire property" is $315,405.00, which is also the amount of the claim for PennyMac Loan Services, LLC according to Schedule D. Schedule A also shows the value of the property as "FMV 525k - cos (85) $42k = $483k." Based on the Trustee's preliminary investigation, the value of the property is approximately $483,000.00 after deducting costs of sale. The equity of $167,595.00 has not been claimed as exempt. The total amount that will be paid to unsecured creditors is only $2,120.00

The plan filed May 1, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

13. 18-22528-B-13 JPJ-1 — ORLANDO CISNEROS, Kyle W. Schumacher — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 6-13-18 [54]

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

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

First, the Debtor could not be questioned at the first meeting of creditors held on June 7, 2018, because the Trustee did not yet review Debtor's documents that were timely filed on June 6, 2018. The meeting of creditors was continued to July 5, 2010, but the Trustee and Debtor's attorney agreed that the Debtor and Debtor's attorney did not need to appear at the continued hearing.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,905.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $3,905.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan cannot be fully assessed for feasibility. According to Schedule I, Debtor's net income from rental property and/or operation of a business is $2,000.00. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

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

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $17,100.00. The total amount that will be paid to unsecured creditors is only $0.00.

The plan filed June 6, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

14. 18-22728-B-13 JPJ-1 — DAN/KATHRYN BOHAN — Timothy J. Walsh — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-1-18 [16]

CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/05/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

15. 17-22237-B-13 KEVONNA BROWN MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 5-21-18 [33]

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

The court's decision is to permit the requested modification and confirm the modified plan.

Residential Bancrop and the Chapter 13 Trustee object to plan confirmation on grounds that the modified plan does not provide for all post-petition delinquency owed to Residential Bancrop in Class 1. The modified plan provides for only two post-petition payments in the amount of $3,158.40. The actual post-petition delinquency is $9,525.92. The modified plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

The Debtor filed a response stating that it agrees the proposed plan does not fully provide for the post-petition delinquent mortgage payments owed to Residential Bancrop. Debtor proposes to pay an additional $700.00 into the plan to allow for full payment of the post-petition arrears.

Provided that the additional payment is sufficient to cure the post-petition arrearages owed to Residential Bancrop, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

16. 13-23840-B-13 TROY NELSON MOTION TO EXTEND TIME
AP-1 Jessica A. Dorn 6-15-18 [39]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Wells Fargo Bank, N.A.'s Motion to Enlarge Time to File Response to Notice of Final Cure Payment 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 grant the motion to enlarge time to file a response to the Trustee's Notice of Final Cure Payment to July 16, 2018.

Wells Fargo Bank, N.A. ("Movant") requests an extension to file a response to the Chapter 13 Trustee's Notice of Final Cure Payment. The deadline to file a response was June 15, 2018. Movant disputes that all amounts needed to maintain ongoing post petition payments have been tendered. Movant's counsel is still working to provide a detailed accounting of these delinquencies that can be reviewed in conjunction with the Trustee's records so that the source of the discrepancy can be pinpointed. According to Movant's counsel, Wells Fargo did not provide counsel with figures until June 15, 2018. Movant's counsel believes that the accounting can reasonably be accomplished by July 6, 2018.

Movant asserts that cause exists to extend the deadline pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1). The court is not prohibited from enlarging the deadlines outlined in Federal Rule of Bankruptcy Procedure 3002.1 as long as doing so is otherwise consistent with Federal Rules of Bankruptcy Procedure 9006. *See Artificial Intelligence Corp. v. Casey (In re Casey)*, 198 B.R. 918, 921 (Bankr. S.D. Cal. 1996) (stating that "Rule 9006(b)(1) is applicable to any rule with a timing element not prohibited or limited in Rule 9006(b)(2) or (b)(3)."). When a request for enlargement is brought prior to the expiration of the original period sought to be enlarged, said request may be granted for "cause" shown. *See* Fed. R. Bank. P. 9006(b)(1). The standard for "cause" under Federal Rules of Bankruptcy Procedure 9006(b)(1) is a liberal one. *See Bryant v. Smith*, 165 B.R. 176, 181-182 (W.D. Va. 1994) (stating that "'[c]ause shown' is a liberal standard investing the bankruptcy court with considerable flexibility"). As such, this court may enlarge the time requirements under Federal Rules of Bankruptcy Procedure 3002.1(g) for the cause shown.

Discussion

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a Chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. *See* Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is

otherwise current on all payments under § 1322(b)(5). Failure of a holder of a secured claim to comply with the provisions of Federal Rules of Bankruptcy Procedure 3002.1(g) may lead to the imposition of sanctions. *See* Fed. R. Bank. P. 3002.1(I).

Movant's counsel explains that Wells Fargo did not provide counsel with financial figures until June 15, 2018. That same day, Movant filed this motion to enlarge the time to file a response to the Trustee's Notice of Final Cure Payment. It is also the same day that a response was due pursuant to 3002.1(g).

The court finds the Movant's need to perform further investigation of their financial records as sufficient cause to expand the deadline to file a response. Therefore, the motion is granted and the deadline for Movant to file a response to Trustee's Notice of Final Cure Payment is extended to July 16, 2018.

The court will enter an appropriate minute order.

17. 16-26242-B-13 STEVEN/LINDA MAYNERICH MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 5-24-18 [87]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 24, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18. 15-28145-B-13 ROBERT/BONNIE PETERSEN MOTION TO INCUR DEBT
ALF-1 Ashley R. Amerio 6-1-18 [27]

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

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt provided that the order confirming state the following: "The lien of U.S. Bank, National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 6006-AB3 ("Creditor), shall attach to the refinance proceeds in the same amount and priority, with the same validity and enforceability, and subject to the same defenses as existed immediately before the closing of the refinance. Creditor's lien shall be released only upon full payment of the amounts owed to Creditor pursuant to Creditor's Payoff Demand from the proceeds of the refinance including, without limitation, costs and advances, and fees."

Debtors' motion seeks permission to refinance personal residence located at 6429 Almond Avenue, Orangevale, California, ("Property") in order to consolidate the first and second liens and reduce overall monthly payments. The conventional refinance home loan will be in the amount of $375,000.00 at an interest rate of 7.5% that adjusts every year starting year 3, for a 30-year term. The monthly principal and interest payment will be $2,622.05. The proposed financing statement is provided as exh. A, dkt. 30.

U.S. Bank, National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 6006-AB3 ("Creditor) filed a limited objection stating that if the refinance is granted, that the order include certain language providing that Creditor's lien will be paid in full pursuant to a payoff demand of Creditor.

Discussion

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. The motion is granted provided that the order confirming state the following: "The lien of U.S. Bank, National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 6006-AB3 ("Creditor), shall attach to the refinance proceeds in the same amount and priority, with the same validity and enforceability, and subject to the same defenses as existed immediately before the closing of the refinance. Creditor's lien shall be released only upon full payment of the amounts owed to Creditor pursuant to Creditor's Payoff Demand from the proceeds of the refinance including, without limitation, costs and advances, and fees."

The court will enter an appropriate minute order.

19. 18-22045-B-13 ALLEAN BROWN
JPJ-1 Pro Se
Thru #20

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-24-18 [23]

CONTINUED TO 7/24/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/19/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

20. 18-22045-B-13 ALLEAN BROWN
MJ-1 Pro Se

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
5-15-18 [19]

CONTINUED TO 7/24/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/19/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

21. 16-22152-B-13 JPJ-3 — THOMAS/DENISE RAHMING — Eamonn Foster — ORDER TO SHOW CAUSE — 5-30-18 [132]

Tentative Ruling: The order to show cause was issued against attorney Eamonn Foster ("Counsel") for failure to comply with the Notice of Default and Application to Dismiss Case.

Background

On May 30, 2018, the court ordered Counsel for Debtors Thomas and Michelle Rahming ("Debtors") to show cause why he should not be sanctioned for noncompliance with the Local Bankruptcy Rules. Dkt. 132. Counsel timely responded to the court's order to show cause ("OSC") on June 16, 2018. Dkt. 134.

The court's OSC arises out of a Notice of Default and Application to Dismiss ("NOD") the Chapter 13 Trustee ("Trustee") filed and served on March 28, 2018. Dkts. 119, 120. According to the NOD, the Debtors were in default of plan payments totaling $3,600.00 ($5,400.00 including a subsequent plan payment).[1]

Consistent with Local Bankruptcy Rule 3015-1(g), the NOD provided the Debtors with three options:

> (1) if the Debtors believed that the default stated in the NOD did not exist, and therefore they were not in default, they could file a written objection by April 25, 2018, and set it for hearing on at least 14 days' notice, *see* Local Bankr. R. 3015-1(g)(2);
>
> (2) the Debtors could admit the default stated in the NOD and pay it by April 27, 2018, *see* Local Bankr. R. 3015-1(g)(3)(A); or
>
> (3) the Debtors could admit the default stated in the NOD and within 30 days file a modified plan and motion to confirm it, *see* Local Bankr. R. 3015-1(g)(3)(A).

Dkt. 119.

The Debtors filed an objection to the NOD on April 23, 2018, and set a hearing on that objection for May 29, 2018. Dkts. 121-124. The Debtors' objection conceded - and therefore did not dispute - that a default existed at the time the objection was filed and a hearing on it set. Dkt. 121 at 1:20-22. Indeed, the Debtors' objection states that the Debtors "will be caught up in full" on their payments prior to the hearing on the objection and also "[b]y the date of the hearing" the record should show that the Debtors are current. *Id.* The Debtors apparently elected to file an objection because they could not cure their default by April 27, 2018, and a modified plan was not feasible given a recent successful plan modification. Dkt. 134 at 2:16-24.

Asserting that the Debtors' objection was inconsistent with - and the relief requested in it was not permitted by - the local rules, the Trustee replied to the objection on May 1, 2018. Dkts. 125-129.

The objection was heard on May 29, 2018. Because the Debtors were current on plan

[1] This was actually the Debtors' third default notice from the Trustee. The first was filed on October 27, 2016, and noticed a $3,850.00 default ($5,775.00 including a subsequent plan payment). Dkt. 19. The second was filed on September 26, 2017, and noticed a $3,840.00 default ($5,760.00 including a subsequent plan payment). Dkt. 90. These repeated defaults caused the court to order, on May 29, 2018, that the Debtors remain current on all future plan payments subject to possible dismissal upon the Trustee's ex parte request if they do not. Dkts. 131, 132.

payments at that time, the court sustained their objection and denied the Trustee's motion to dismiss based on the NOD. Dkts. 131, 132. The court's OSC followed. *Id.*

Discussion

The problem here is not that an objection to the NOD was filed but, rather, what that objection said and its intended purpose.

Local Bankr. R. 3015-1(g)(2) permits a debtor set a hearing on a trustee's default notice "[i]f the debtor believes that the default noticed by the trustee *does not exist*[.]" (Emphasis added). Notably, the rule is written in the present tense as opposed to the future tense. In other words, the relevant belief is that a "default does not exist" when the objection is filed and set for hearing and not that a "default will not exist" when the objection is heard.

Here, the Debtors' objection conceded - rather than disputed - the existence of a default. And although the objection stated that the Debtors would be current before it was heard, *i.e.*, that a "default will not exist", when the objection was filed and a hearing on it set the Debtors did not (and could not) believe that a "default did not exist." That makes the Debtors' objection inconsistent with the local rule and not well-founded. It also makes it improper.

Once the Debtors *admitted* their default, that left them with only two options: (i) pay the amount stated in the NOD by April 27, 2018, *see* Local Bankr. R. 3015-1(g)(3)(A); or (ii) file a modified plan within 30 days, *see* Local Bankr. R. 3015-1(g)(3)(B). The Debtors did neither. Instead, knowing that they could not cure their default by April 27, 2018, and electing to forego a modified plan, the Debtors set their improper objection (improper because it conceded and did not dispute the existence of a default) as far out as possible, *i.e.*, on 28-days' notice under Local Bankr. R. 9014-1(f)(1), so as to extend the 30-day default cure period to more than 60 days.

The Debtors effectively manipulated the local rules with an improper objection to the NOD for an impermissible purpose, *i.e.*, to obtain an extended default notice cure period not provided in or contemplated by the local rules. Indeed, the local rules clearly state that each of the options available to a debtor are limited to and must be performed "all within the time constraints set out [in Local Bankr. R. 3015-1(g)(2) and (3)]." Local Bankr. R. 3015-1(g)(4). Accordingly, the court finds Counsel's conduct to be sanctionable. *See* Local Bankr. R. 1001-1(g).[2] And because it is Counsel who prepared and utilized the improper objection for an impermissible purpose, Dkt. 134 at 2:22-23, Counsel is the one who should bear the consequences. *See Swartout v. Johnson (In re Swartout)*, 2017 WL 1371298, *4 (9th Cir. 2017) (debtor should not be punished for transgressions of the lawyer).

Conclusion

For all the foregoing reasons, the OSC shall be ordered sustained. Debtors' Counsel is ordered to pay the clerk of the court $250.00 by July 13, 2018, and further ordered to file certification of payment within three (3) days of the date of payment.

Counsel's request for permission to appear telephonically is granted.

The court will enter an appropriate minute order.

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[2]Local Bankr. R. 1001-1(g) states as follows:
Sanctions for Noncompliance with Rules. Failure of counsel or of a party to comply with these [Local] Rules, . . . may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

22. 17-22556-B-13 LOUIS/HELEN GARCIA
PGM-2 Peter G. Macaluso
Thru #24

MOTION TO AVOID LIEN OF JPMORGAN CHASE BANK, N.A.
5-28-18 [40]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(c)(1)(A) 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of JPMorgan Chase Bank, N.A. ("Creditor") against the Debtors' property commonly known as 5412 Fair Oaks Blvd, Carmichael, California ("Property").

Two separate judgment liens were filed against Debtors' Property for the same debt. The first judgment was entered against Louis Garcia, as an individual, in favor of Creditor in the amount of $43,507.42. An abstract of judgment was recorded with Sacramento County on April 4, 2011, which encumbers the Property. The second judgment was entered against Louis Garcia, Trustee of the Garcia Revocable Living Trust Dated August 19, 2002, in favor of Creditor in the amount of $43,507.42. An abstract of judgment was recorded with Sacramento County on May 20, 2013, which encumbers the Property.

The first deed of trust is in the amount of $594,678.00.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of $485,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

23. 17-22556-B-13 LOUIS/HELEN GARCIA
PGM-3 Peter G. Macaluso

MOTION TO AVOID LIEN OF BOB PELLEGRINI
5-28-18 [45]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(c)(1)(A) 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d

52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Bob Pellegrini ("Creditor") against the Debtors' property commonly known as 5412 Fair Oaks Blvd, Carmichael, California ("Property").

A judgment was entered against Louis Garcia favor of Creditor in the amount of $3,151.75. An abstract of judgment was recorded with Sacramento County on May 6, 2014, which encumbers the Property.

The first deed of trust is in the amount of $594,678.00.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of $485,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

24.	17-22556-B-13 PGM-4	LOUIS/HELEN GARCIA Peter G. Macaluso	MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT 5-28-18 [51]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(c)(1)(A) 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Employment Development Department ("Creditor") against the Debtors' property commonly known as 5412 Fair Oaks Blvd, Carmichael, California ("Property").

A judgment was entered against Louis Garcia favor of Creditor in the amount of $20,888.37. An abstract of judgment was recorded with Sacramento County on July 7,

2014, which encumbers the Property.

The first deed of trust is in the amount of $594,678.00.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of $485,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

25.	18-22956-B-13 JPJ-1	MARIO/DEBORAH DERENZI David P. Ritzinger	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-14-18 [13]

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

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

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since Debtors' projected disposable income is not being applied to make payments to unsecured creditors. There appears to be several impermissible deductions on Form 122C-2:

- Line 41: $325.00 for voluntary retirement contributions. The Debtor's voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and therefore such income must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012).

- Line 19: $70.67 for domestic support obligation. The Debtor testified at the meeting of creditors that the domestic support obligation has ended and he is no longer responsible for paying it.

- Line 23: $410.00 is more than the entire amount of telephone and internet expenses listed at $300.00 on Schedule J.

- Line 21: $542.00 is more than the childcare monthly expense listed at $217.00 on Schedule J.

- Line 36: the Trustee fee is incorrect. Debtors use 7.5% but the correct percentage is 7.2%. The correct expense at this line should be $134.80.

Correcting the above expenses, the Debtors' monthly disposable income on Line 45 should be $745.94 and Debtors must pay no less than $44,756.00 to general unsecured creditors. The Trustee calculates that the plan will pay only $3,081.42 or 3% to the general unsecured creditors.

The plan filed May 11, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

26. 18-22359-B-13 KIMBERLY CHILDRESS
JPJ-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-4-18 [33]

CONTINUED TO 7/24/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/19/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

27. 18-23760-B-13 TLA-1 **Thru #28**
BRIAN/MICHELLE BERENDSEN
Thomas L. Amberg
MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE
6-18-18 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of CarMax Auto Finance (a/k/a CarMax Business Services, LLC) 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 CarMax Auto Finance (a/k/a CarMax Business Services, LLC at $11,510.00.

Debtors' motion to value the secured claim of CarMax Auto Finance (a/k/a CarMax Business Services, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Hyundai Tucson ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $11,510.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by CarMax Business Services, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 5, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,606.00. 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 $11,510.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

28. 18-23760-B-13 TLA-2
BRIAN/MICHELLE BERENDSEN
Thomas L. Amberg
MOTION TO VALUE COLLATERAL OF EXETER FINANCE CORP.
6-18-18 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Exeter Finance Corp. 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 Exeter Finance Corp. at $9,580.00.

Debtors' motion to value the secured claim of Exeter Finance Corp. ("Creditor") is accompanied by Debtor's declaration. Debtors are the owners of a 2014 Hyundai Accent ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $9,580.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' 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).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 16, 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 $16,741.00. 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 $9,580.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

29. 16-26062-B-13 NOMIE PATTON MOTION TO MODIFY PLAN
EJS-4 Eric John Schwab 5-16-18 [72]

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

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

First, it would be an administrative burden on the Chapter 13 Trustee to recover funds that were previously disbursed in accordance with a confirmed plan and allowed proofs of claim. Section 3.14 of the modified plan decreases the dividend to unsecured, non-priority creditors from 5% to 0%. The Trustee has already disbursed approximately 5% to unsecured, non-priority creditors.

Second, the modified plan cannot be effectively administered. The modified plan adds post-petition arrearages to Wells Fargo Home Mortgage in the amount of $2,509.00 under Class 1. Pursuant to the Trustee's records, no such post-petition delinquency exists since the creditor has been paid all payments due through the May 25, 2018, disbursement cycle.

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.

30.	17-25667-B-13 JPJ-1	FAE/DARIN FORDYCE Edward A. Smith	OBJECTION TO CLAIM OF WELLS FARGO DEALER SERVICES, CLAIM NUMBER 37 5-7-18 [29]

Final Ruling: No appearance at the July 3, 2018, 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. 37 of Wells Fargo Dealer Services and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Wells Fargo Dealer Services ("Creditor"), Proof of Claim No. 37 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $115.82. 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 3, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed February 22, 2018.

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 fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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.

31.	18-22770-B-13 JPJ-1	GREGORY HUTCHINSON Seth L. Hanson	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-13-18 [12]

CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/05/18.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The court will enter an appropriate minute order.

32. 18-22674-B-13 DIDIER GIRON
JPJ-1 Seth H. Hanson
Thru #33

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-4-18 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

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

There being no other objection to confirmation, the plan filed April 30, 2018, will be confirmed.

The court will enter an appropriate minute order.

33. 18-22674-B-13 DIDIER GIRON
JPJ-2 Seth Hanson

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-4-18 [17]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of its Objection to Debtor's Claim of Exemptions, 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.

The court will enter an appropriate minute order.

34. 13-24885-B-13 THOMAS/ROSLIND GALLAGHER
WW-2 Mark A. Wolff

MOTION FOR CONTINUED ADMINISTRATION OF THE CASE AND/OR MOTION TO SUBSTITUTE DEBTOR IN PLACE OF CODEBTOR
5-29-18 [30]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

The Notice of Death and Motion for Continued Administration and Substitution 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to substitute the surviving Debtor, who is appointed successor 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 Thomas Gallagher gives notice of death of his wife and Co-Debtor Roslind Gallagher and requests the court substitute Debtor 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. Debtor is able to prosecute this case in a timely and reasonable manner. Debtor holds possession and control of his deceased spouses assets and obligations since all such were held as community property. Additionally, Debtors have completed payments under the terms of their confirmed Chapter 13 plan. The last payment was made on or about May 3, 2018.

Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The deceased Debtor's certification otherwise required for entry of a discharge is waived. The court grants the motion.

The court will enter an appropriate minute order.

35. 18-23289-B-13 MICHAEL FONTES MOTION TO EXTEND AUTOMATIC STAY
DBL-1 Bruce Charles Dwiggins 6-14-18 [18]

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)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 26, 2018, due to delinquency in plan payments and failure to file a plan (case no. 17-28011, dkt. 27). 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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 does not explain why the previous case was filed but states that if the automatic stay is not extended in this case, creditors will be free to continue their collection efforts and seize his assets. Debtor states that the previous case was dismissed because Debtor is disabled and sometimes confused as to his responsibilities. Debtor asserts that he is working to correct this and fully intends to complete his responsibilities as a debtor.

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.

36. 17-25090-B-13 MARTHA RAMIREZ MOTION TO SELL
PGM-4 Peter G. Macaluso 5-31-18 [80]

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

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

The Bankruptcy Code permits Chapter 13 debtors 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 232 South Mirage Avenue, Lindsay, California ("Property").

Proposed purchaser Lemus Eloisa L. Living Trust has agreed to purchase the Property for $55,000.00. After taxes and expenses of $4,817.33, the net proceeds from this sale will be $55,062.71. Debtor's ex-husband, Santiago Ramirez a co-owner of the Property, is to receive a share of the proceeds in the amount of $20,000.00, leaving approximately $35,062.71 that the Debtor intends to pay into the Chapter 13 plan. The Debtor proposes to sell the Property and continue in the Chapter 13 Plan for the remaining 51 months. Debtor asserts that the sale of the Property does not affect her ability to complete the Plan.

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.

37. 18-21193-B-13 FERNANDO ROJAS MOTION TO CONFIRM PLAN
RJ-2 Richard L. Jare 5-17-18 [36]

Tentative Ruling: The Motion to Confirm 1st [Amended] Chapter 13 Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

The plan cannot be assessed for feasibility. The Debtor has listed a Domestic Support Obligation claim for Sacramento County DA Child Support Enforcement. The Debtor relies on 11 U.S.C. § 1322(a)(4) to state that the claim does not need to be paid in full in order to complete the plan so long as he pays all of his disposable income over the duration of the plan. However, without a proof of claim asserting that this is actually a § 507(a)(1)(B) claim or that the creditor assents to this treatment, it cannot be ascertained whether this is the proper treatment for the claim. The court notes that this problem with the prior plan was raised by the Trustee and sustained by the court on May 1, 2018.

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

The court will enter an appropriate minute order.

38. 18-22794-B-13 HAROLD HODSDON
JPJ-1 Dale Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-13-18 [18]

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

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

First, the 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 has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to his net income of $6,800.00 from operation of a business.

Third, the Debtor has not provided the Trustee with requested copies of certain items related to his business of buying vehicles including, but not limited to, a completed business examination checklist, income tax returns for the two-year period prior to the filing of the petition, bank account statements for the xis-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits.

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

The plan filed May 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

39.	18-22996-B-13 JPJ-1	BARRY/TSICHLIS DUNN Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-13-18 [16]

Final Ruling: No appearance at the July 3, 2018, hearing is required.

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

There being no other objection to confirmation, the plan filed May 12, 2018, will be confirmed.

The court will enter an appropriate minute order.

40. 14-25618-B-13 JPJ-2 **See Also #9**

SHELDON/MELANIE HIRSCH
Diana J. Cavanaugh

CONTINUED MOTION TO DISMISS CASE
5-21-18 [182]

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

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

The plan filed on December 11, 2014, proposed a plan duration of 60 months. The order confirming the plan was entered on March 4, 2015. The case is currently in month 49. The confirmed plan stated that the Debtors had applied for a modification of the home loan owed to Citi Mortgage, Inc., predecessor to BSI Financial Services. While the loan modification application was pending, the Trustee would make "adequate protection" payments to Citi Mortgage, Inc., in the amount of $1,735.00 and that the plan would be modified when the Debtors obtained an agreement for a loan modification.

To date, the Debtors have not obtained a loan modification. Also under the terms of the confirmed plan, the plan will take 273 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The court notes that the Debtors acknowledge they have been unsuccessful in obtaining a loan modification and that they filed a modified plan on June 26, 2018, and set it for confirmation hearing on August 7, 2018. The Debtors also filed a Motion to (1) Compel BSI Financial Inc. to Comply with FRBP 3002.1 and (2) Compel BSI Financial Inc. to File Written Notification with the Court and/or Chapter 13 Trustee Regarding the Current Status of Pre-petition Arrears Owing. That motion was heard at Item #9 and denied without prejudice.

Because the Debtors have filed a modified plan, cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

41. 17-20155-B-13 RUMMY SANDHU
JPJ-2 Peter G. Macaluso

CONTINUED MOTION TO DISMISS CASE
5-24-18 [104]

Tentative Ruling: This matter was continued from June 26, 2018, to provide Debtor additional time to file documents requested by the Trustee: income tax return for the tax year 2017, W-2 wage and tax statement for the year 2017, copies of bank account statements for January through March 2018, copies of payment advices for January through March 2018, and information regarding any inheritances, life insurance benefits, lawsuits, potential claims against third parties, judgments in civil actions, lottery and other gambling winnings received since the filing of the petition pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan.

If the Trustee is satisfied with the documents produced, the case will not be dismissed.

The court will enter an appropriate minute order.

42. 17-25575-B-13 ORACIO QUEZADA MOTION TO SELL
WW-5 Mark Wolff 6-26-18 [96]

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell his interest in property described as 9909 Greenacres Drive, Bakersfield, California ("Property").

Proposed purchaser Max & Sons, Corp. agreed to purchase Debtor's interest in the Property for $7,000.00 plus reimbursement paid to Debtor for his expenses in connection with renovating the Property. Max & Sons, Corp. is a co-owner of the property and employer to Debtor. Debtor is an employee of Max & Sons, Corp. and provided renovation work on the Property in connection with his employment.

Debtor asserts that he has approximately $7,400.00 in claims for personal debts that will be paid through the plan and that the proceeds from the sale of his interest in the Property will be sufficient to pay his unsecured creditors in full.

Additionally, Max & Sons, Corp. has arranged financing in the amount of $262,500.00 to purchase the Property and this will pay in full first deed of trust holder Spartan Mortgage Services Inc. Pursuant to the court's order dated June 19, 2018, if Spartan Mortgage Services Inc. is not paid in full by July 10, 2018, the automatic stay shall lift as to creditor. Dkt. 93.

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.