

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

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**July 10, 2018 at 1:00 p.m.**

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1. [18-22900](#)-B-13 BARBARA REYNOLDS OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Jeffrey S. Ogilvie PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-19-18 [[20](#)]

CONTINUED TO 7/31/18 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S  
MOTION TO VALUE COLLATERAL FOR BANK OF AMERICA.

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The court will enter an appropriate minute order.

2. [18-22701](#)-B-13 MARCOS FLAVIO LOYOLA OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 RAMIREZ AND RECHEL PLAN BY JAN P. JOHNSON  
Thru #3 Rupert Corkill 6-19-18 [[20](#)]

**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.

First, 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 \$8,618.50. The total amount that will be paid to unsecured creditors is only \$0.00.

Second, the claim with Specialized Loan Servicing does not fit the description for a Class 1 claim since it is current. The pre-written language of the form plan defines a Class 1 claim as a delinquent secured claim that matures after the completion of the plan, including those secured by a debtor's principal residence. The claim of Specialized Loan Servicing should be a Class 4 claim because it is current and will mature after the completion of the plan.

Third, feasibility depends on the granting of a motion to value collateral for Specialized Loan Servicing. The Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Fourth, the Debtors have not filed an amended Schedule J to list three dependents instead of two as requested by the Trustee at the meeting of creditors.

Fifth, the Debtors have not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Debtors' attorney shall proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Sixth, the Debtors have not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtors have not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Seventh, the plan cannot be assessed for feasibility. According to Schedule I, Debtors' net income from rental property and/or operation of a business is \$1,190.00. The Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

The plan filed May 14, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

3. [18-22701](#)-B-13 MARCOS FLAVIO LOYOLA OBJECTION TO CONFIRMATION OF  
[VVF](#)-1 RAMIREZ AND RECHEL PLAN BY AMERICAN HONDA FINANCE  
Rupert Corkill CORPORATION  
5-31-18 [[14](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local

Bankruptcy Rules 3015-1(c) (4) & (d) (1) and 9014-1(f) (2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f) (1) (C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot based on Item #2.

The plan filed May 14, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

**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 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. If there is opposition, the court may reconsider this tentative ruling.

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

Debtors seek 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on April 16, 2018, by the Debtors' voluntary request for dismissal (case no. 16-25907, dkts. 36, 37). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

### Discussion

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 Debtors state that the previous and present cases were filed in order to stop a trustee's sale on their home. The Debtors had been paying into the plan of the prior case for two years but, in January 2018, the Debtors were involved in a car accident and needed to obtain a new car. Problematic was that no one would provide the Debtors with financing while they were in bankruptcy that was less than 15 percent or that was acceptable to the trustee or the court. Debtors sought to voluntarily dismiss the case so that they could obtain a car loan. Now that the Debtors have obtained a replacement vehicle, they have refiled for bankruptcy protection to save their home. Debtors assert that their circumstances have changed since they have a replacement vehicle, the vehicle is provided for through the new plan, Joint-Debtor has a means to get to work, and they have sufficient income to fund plan payments.

The Debtors have 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.

5. [18-22107](#)-B-13 WALLEEN YEP CONTINUED OBJECTION TO  
[EAT](#)-1 Jonathan D. Matthews CONFIRMATION OF PLAN BY WELLS  
**Thru #7** FARGO BANK, N.A.  
5-16-18 [[40](#)]

**Tentative Ruling:** The Objection to Confirmation of Debtor's 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 overrule the objection as moot since Wells Fargo Bank, N.A.'s motion for relief from automatic stay as to real property was granted on May 22, 2018. The plan is not confirmed for reasons stated at Item #7. See dkt. 49.

The court will enter an appropriate minute order.

6. [18-22107](#)-B-13 WALLEEN YEP CONTINUED OBJECTION TO  
[EAT](#)-2 Jonathan D. Matthews CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
5-17-18 [[43](#)]

**Tentative Ruling:** The Objection to Confirmation of Debtor's 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 overrule the objection as moot since Wells Fargo Bank, N.A.'s motion for relief from automatic stay as to real property was granted on May 22, 2018. The plan is not confirmed for reasons stated at Item #7. See dkt. 49.

The court will enter an appropriate minute order.

7. [18-22107](#)-B-13 WALLEEN YEP CONTINUED OBJECTION TO  
[JPJ](#)-1 Jonathan D. Matthews CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
5-24-18 [[49](#)]

**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, although the Debtor did not appear at the meeting of creditors set for May 17, 2018, the Debtor and counsel did appear at the continued June 21, 2018, meeting of creditors as required pursuant to 11 U.S.C. § 343.

Second, 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).

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

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 Debtor failed to specify the amount of the Class 1 arrearage dividend to Wells Fargo. The Trustee is therefore unable to fully comply with § 3.07(a) of the plan.

Sixth, the Debtor's plan is not feasible. Debtor lists Wells Fargo as a Class 1 debt showing \$120,000 in pre-petition arrearages but fails to list an arrearage dividend. Also the post-petition monthly payment amount listed is incorrect based on Wells Fargo's claim number 2-2 filed May 16, 2018. The Debtor proposes plan payments of only \$500 per month, which is insufficient to pay the necessary plan payment of \$6,246.55 (\$3,333 to repay arrearage owed to Wells Fargo, \$2,382.59 in post-petition monthly payment to Wells Fargo, and trustee fee) over the 36 months proposed. In the event that the plan was stretched out to the maximum term of 60 months, the monthly plan payment of \$500 would still be insufficient to pay the necessary plan payment amount of \$4,789.56 (\$2,000, \$2,383.59, and trustee fee).

Seventh, the plan fails to specify a minimum dividend to Class 7 unsecured nonpriority creditors at § 3.14 pursuant to 11 U.S.C. § 1325(a) (1).

Eighth, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Ninth, it is uncertain whether Debtor has the ability to make plan payments as proposed. Although the Debtor lists income for himself and non-filing spouse on Schedule I, the Debtor does not provide a breakdown of the total expenses listed on Line #22c, Schedule J, in the amount of \$3,015.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a) (6).

Tenth, the Debtor has not fully and accurately provided all information required by the petition, schedules and Statement of Financial Affairs. Specifically, Schedule H lists a co-debtor but does not list who the co-Debtor is. Pursuant to proof of claim filed by Wells Fargo Bank, N.A. (claim nos. 1-2, 2-1), Yong Sun Yep is a co-debtor on the Home Equity Line of Credit and first deed of trust, respectively. Additionally, the Debtor has not answered questions 3 and 8 to 20 on his Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a) (3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a) (1).

The plan filed April 24, 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.

8. [18-22112](#)-B-13 THOMAS ALGER  
[JPJ](#)-1 Michael Benavides

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-24-18 [[21](#)]

**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 and Debtor's counsel did not appear at the continued meeting of creditors set for July 5, 2018, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor has not provided the Trustee with a copy of his 2017 state tax return as requested by the Trustee at the May 17, 2018, first meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(e)(3).

Fourth, the plan payment in the amount of \$1,429.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$1,658.00. The plan does not comply with Section 5.02(a) of the mandatory form plan.

The plan filed April 23, 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.

**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 February 28, 2018, due to pro se Debtor's failure to timely file documents (case no. 18-20589, dkt. 21). 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.

### Discussion

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 asserts that her previous and present cases were filed in order to protect her residence from possible foreclosure. Debtor states that her circumstances have changed because she was not represented by counsel in the previous case but now has retained counsel to successfully navigate the complexities of a chapter 13 bankruptcy. Additionally, the previous case was a Chapter 7 and did not address mortgage arrears. Debtor has started a job with the State of California with sufficient income to support plan payments. Debtor states that she has filed a plan that is likely to succeed and address her mortgage issues.

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.

10. [17-22634](#)-B-13 RANDY RICHARDSON AND CONTINUED MOTION TO CONVERT  
[JPJ-1](#) JACQUELYN CASE TO CHAPTER 7 AND/OR MOTION  
Thru #11 W. Steven Shumway TO DISMISS CASE  
3-30-18 [[86](#)]

**Tentative Ruling:** The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was 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 dismiss the case.

On May 16, 2018, the court entered an order requiring Debtors to file, serve, and set for hearing a modified plan and motion to confirm by June 5, 2018, at 1:00 p.m. A modified plan and motion to confirm were filed and served on May 30, 2018. The confirmation hearing date was set for July 10, 2018, at 1:00 p.m. The motion to modify is denied at Item #11.

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

However, Debtors argue that conversion of the case to a Chapter 7 will force them to sell their house, move their farm and animals, and incur a rental expense that exceeds the amount of the mortgage payment they currently make. Instead, dismissal of the case will allow the Debtors to remain in their house and work out payment arrangements with their creditors. Debtors state that they were offered a loan modification with Selene Finance LP ("Selene") that reduces their mortgage payment by approximately \$740.00 per month. Although Debtors filed as an exhibit documentation showing Selene's offer, there is no evidence of a signed or approved loan modification agreement.

#### **Discussion**

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

The Bankruptcy Code Provides:

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

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

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c) since the Debtors are amenable to dismissal of the case and conversion would force the Debtors to sell their home, move their farm and animals, and incur rental expense that exceeds the amount of their current mortgage payment. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

11. [17-22634](#)-B-13 RANDY RICHARDSON AND MOTION TO MODIFY PLAN  
[WSS-6](#) JACQUELYN 5-30-18 [[99](#)]  
W. Steven Shumway

**Tentative Ruling:** The Motion to Confirm 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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan cannot be effectively administered. The plan fails to specify a cure of the post-petition arrearage owed to Five Lakes Agency Inc. for months 11/2017, 1/2018, 3/2018, 4/2018, and 5/2018 (totaling \$2,035) including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is unable to comply with § 3.07(b) of the plan.

Second, feasibility depends on the Debtors obtaining a loan modification with Selene Finance. According to the Debtors' motion, the loan modification would cure both the pre- and post-petition arrears by capitalizing these amounts into the loan. However, without proof of the loan modification, it cannot be ascertained whether there is such a loan modification or whether the plan is feasible.

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

The court will enter an appropriate minute order.

12. [18-21637](#)-B-13 GREGARY/PATRICIA ARENDT MOTION TO CONFIRM PLAN  
[TLA-1](#) Thomas L. Amberg 5-10-18 [[25](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The Motion to Confirm Amended Plan 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 10, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. [18-21346](#)-B-13 ALBERTO SEVILLA OBJECTION TO CLAIM OF CAVALRY  
[JPJ](#)-1 Mikalah R. Liviakis SPV I, LLC, CLAIM NUMBER 1  
5-17-18 [[14](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Cavalry SPV I, LLC 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. 1-2 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-2. The claim is asserted to be in the amount of \$895.97. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about January 13, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 8, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

14. [18-22952](#)-B-13 THERESE ALVES  
[MOH-1](#) Michael O'Dowd Hays

CONTINUED MOTION FOR RETURN OF  
COLLATERAL AND/OR MOTION FOR  
SANCTIONS  
6-5-18 [[17](#)]

**Tentative Ruling:** This matter was continued from June 19, 2018, to provide Debtor additional time to explain her interest in the 2016 Subaru Forester and to supplement the record. No supplemental declaration, exhibits, or other information has been filed as of July 7, 2018.

Debtor's Motion for Return of Collateral, Sanctions and Attorney Fees was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The matter will be determined at the scheduled hearing.

15. [16-24559](#)-B-13 STEVEN SIPE  
[LES](#)-1 Lucas B. Garcia

CONTINUED STATUS CONFERENCE RE:  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
4-17-18 [[94](#)]

JAMES AND JUDITH CARTER VS.

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

The court's decision is to deny the motion to convert or in the alternative dismiss case.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted on the basis that Debtor is \$6,035.00 delinquent in plan payments, which represents 1.9 plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Trustee asserts that conversion rather than dismissal is in the best interest of creditors pursuant to 11 U.S.C. § 1307(c) because the total value of non-exempt equity in the estate is \$69,220.70 according to Schedules A/B and C filed on June 14, 2017.

#### **Response by Debtor**

Debtor states that she has been struggling to catch up on payments due to a personal emergency earlier this year. Debtor asserts that she has been making good faith payments as shown payments of \$1,000 posted on the National Data Center website on March 21, 2018, March 26, 2018, April 2, 2018, April 6, 2018, April 16, 2018, April 23, 2018, and May 1, 2018. Debtor filed a modified plan on June 22, 2018, to bring the Debtor current. The confirmation hearing of the modified plan is set for July 31, 2018, at 1:00 p.m.

#### **Discussion**

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

The Bankruptcy Code Provides:

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

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

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c)

since the Debtor has filed a modified plan to cure the delinquency in plan payments. The motion is denied without prejudice and the case is not converted or dismissed.

The court will enter an appropriate minute order.

17. [17-27160](#)-B-13 PA VANG  
[JPJ](#)-1 Gabriel E. Liberman

OBJECTION TO CLAIM OF GOLDEN  
ONE CREDIT UNION, CLAIM NUMBER  
10  
5-7-18 [[18](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The Trustee's Objection to Allowance of Claim of Golden One Credit Union 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. 10-1 of Golden One Credit Union and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Golden One Credit Union ("Creditor"), Claim No. 10-1. The claim is asserted to be in the amount of \$1,612.83 and that the basis of the claim is "credit card." Objector asserts that for a claim based on an open-end or revolving consumer credit agreement, Fed. R. Bankr. P. 3001(c)(3)(A) requires a statement to be filed with the proof of claim with specific information: the name of the entity from whom the creditor purchased the account; the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; the date of an account holder's last transaction; the date of the last payment on the account; and the date on which the account was charged to profit and loss.

A review of the Creditor's proof of claim shows that the attachments did not include all of the required information. Also the amended proof of claim filed May 29, 2018, does not include the required information.

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

The court will enter an appropriate minute order.

18. [17-27762](#)-B-13 RICHARD MYHRE  
[JPJ](#)-2 Pro Se

CONTINUED MOTION TO CONVERT  
CASE TO CHAPTER 7 AND/OR MOTION  
TO DISMISS CASE  
5-8-18 [[62](#)]

**Tentative Ruling:** This matter was continued from June 26, 2018, to allow the Debtor to file a plan on or before July 10, 2018. The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was 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 matter will be determined at the scheduled hearing.

The Chapter 13 Trustee moves to convert this case because the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation was heard and sustained on March 6, 2018. To date, the Debtor has failed to take further action to confirm a plan. The Trustee further states that conversion, rather than dismissal, would be in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c) because Debtor has non-exempt property of approximately \$35,456.11 to \$146,206.11 after deducting a Chapter 7 trustee's fee.

In response, Debtor requested a continuance on the Trustee's motion to convert stating that JP Morgan Chase has offered a loan modification as to real property located in Drain, Oregon. See dkt. 70, exh. B.

Separately, as to proof of claim number 5-1 filed by JP Morgan Chase Bank, National Association, which secures real property located in Lincoln, California, the creditor filed a notice stating that the claim has been satisfied. See Notice of Satisfaction of Claim filed April 30, 2018. A Deed of Full Reconveyance was recorded with Placer County Recorder on May 22, 2018. See dkt. 70, exh. A.

The Debtor has also received a wire transfer in the amount of \$121,822.50 for his cashed out 1/3 interest in real property located in Sacramento, California. See dkt. 70, exh. D.

Due to these developments, Debtor asserts he needs additional time to determine what needs to be paid to unsecured creditors and, the court inferred, additional time to file a new plan and set it for a confirmation hearing. The Debtor was given until July 10, 2018, to file a new plan.

The matter will be determined at the scheduled hearing.

19. [16-20664](#)-B-13 RICHARD/ROBERTA BLAKE MOTION TO INCUR DEBT  
[ALF](#)-2 Ashley R. Amerio 6-12-18 [[41](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The motion to incur debt having been withdrawn by the Debtors, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

20. [14-27570](#)-B-13 DANIEL/DENISE STYRING OBJECTION TO CLAIM OF CAVALRY  
[KWS-1](#) Kyle W. Schumacher SPV I, LLC, CLAIM NUMBER 1-1  
**Thru #22** 5-14-18 [[46](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Debtors' Objection to Allowance of Claim 1-1 of Cavalry SPV I, LLC 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. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Daniel Styring and Denise Styring, the Chapter 13 Debtors ("Objectors"), request that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be unsecured in the amount of \$1,167.50. Objectors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). Objectors do not seek the return of any funds paid to date by the Chapter 13 Trustee to the Creditor.

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about June 2, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on July 24, 2014, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

21. [14-27570](#)-B-13 DANIEL/DENISE STYRING OBJECTION TO CLAIM OF MIDLAND  
[KWS-2](#) Kyle W. Schumacher CREDIT MANAGEMENT, INC., CLAIM  
NUMBER 4-1  
5-14-18 [[50](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Debtors' Objection to Allowance of Claim 4-1 of Midland Credit Management, Inc. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4-1 of Midland Credit Management, Inc. and the claim is disallowed in its entirety.

Daniel Styring and Denise Styring, the Chapter 13 Debtors ("Objectors"), request that the court disallow the claim of Midland Credit Management, Inc. ("Creditor"), Claim No. 4-1. The claim is asserted to be unsecured in the amount of \$5,077.72. Objectors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). Objectors do not seek the return of any funds paid to date by the Chapter 13 Trustee to the Creditor.

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about October 13, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on July 24, 2014, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

22. [14-27570](#)-B-13 DANIEL/DENISE STYRING OBJECTION TO CLAIM OF QUANTUM3  
[KWS-3](#) Kyle W. Schumacher GROUP, LLC, CLAIM NUMBER 6-1  
5-14-18 [[54](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Debtors' Objection to Allowance of Claim 6-1 of Quantum3 Group, LLC 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. 6-1 of Quantum3 Group, LLC and the claim is disallowed in its entirety.

Daniel Styring and Denise Styring, the Chapter 13 Debtors ("Objectors"), request that the court disallow the claim of Quantum3 Group, LLC ("Creditor"), Claim No. 6-1. The claim is asserted to be unsecured in the amount of \$12,323.24. Objectors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). Objectors do not seek the return of any funds paid to date by the Chapter 13 Trustee to the Creditor.

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last transaction occurred on or about December 20, 2004, which is more than four years prior to the filing of this case. Hence, when the case was filed on July 24, 2014, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

23. [18-20376](#)-B-13 MIHA AHRONOVITZ OBJECTION TO CLAIM OF BANK OF  
[JPJ](#)-2 Mohammad M. Mokarram AMERICA, N.A., CLAIM NUMBER  
Thru #24 12-1  
5-17-18 [[22](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Bank of America, N.A. 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. 12-1 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Claim No. 12-1. The claim is asserted to be in the amount of \$8,551.69. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about September 3, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 24, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

24. [18-20376](#)-B-13 MIHA AHRONOVITZ OBJECTION TO CLAIM OF BANK OF  
[JPJ](#)-3 Mohammad M. Mokarram AMERICA, N.A., CLAIM NUMBER  
11-1  
5-17-18 [[26](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Bank of America, N.A. 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. 11-1 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Claim No. 11-1. The claim is asserted to be in the amount of \$13,586.11. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about September 18, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 24, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

25. [18-21479](#)-B-13 JAN BULLARD  
[DCN-1](#) Mary D. Anderson

MOTION TO CONFIRM PLAN  
5-22-18 [[20](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The Motion to Confirm to Confirm First Amended Chapter 13 Plan Dated May 22, 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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on May 22, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

**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 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. If there is opposition, the court may reconsider this tentative ruling.

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

Debtors seek 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 Debtors second bankruptcy petition pending in the past 12 months. The Debtors prior bankruptcy case was dismissed on May 31, 2018, due to Debtors' delinquency in plan payments and failure to file an amended plan after Debtors' motion to confirm was denied (case no. 17-25115, dkts. 65, 67). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

### Discussion

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 Debtors assert that the present case was filed to avoid a foreclosure of their primary residence and to satisfy a tax debt. Debtors state that their personal and financial circumstances have changed because Joint-Debtor, who was previously self-employed in the prior case, has now obtained employment as a carpenter for Titan Strong Construction. The combined earnings of Debtor and Joint Debtor as stated in Schedule J reflect that they earn enough to fund monthly plan payments of \$3,505.00.

The Debtors have 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.

27. [17-21681](#)-B-13 ALEJANDRO ESPITIA  
[JPJ](#)-2 Richard L. Jare

CONTINUED MOTION TO DISMISS  
CASE  
6-6-18 [[29](#)]

**Tentative Ruling:** This matter was continued from June 26, 2018, to provide Debtor additional time to file documents requested by the Chapter 13 Trustee. If the Trustee is satisfied with the documents produced, the case will not be dismissed at the hearing.

The Trustee's Motion to Dismiss Case was originally 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.

The Chapter 13 Trustee moves for dismissal on grounds that the Debtor has not provided the Trustee with requested copies of certain documents: 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.

The matter will be determined at the scheduled hearing.

28. [18-23983](#)-B-13 SHARON LOCKETT  
[RJ-1](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF  
ELITE ACCEPTANCE CORP.  
6-26-18 [[11](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The Motion to Value Collateral of Elite Acceptance Corp. is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, there appears to be insufficient service of process on Elite Acceptance Corp. The address used by the Debtor does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

29. [16-22090](#)-B-13 JOSHUA/MARILYN JOHNSON MOTION TO MODIFY PLAN  
[CYB-4](#) Candace Y. Brooks 6-5-18 [[90](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 June 5, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm Debtor's [First] Amended Plan Filed on May 31, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by Sutter County Tax Collector and the Chapter 13 Trustee.

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

First, Sutter County Tax Collector holds first-priority tax liens pursuant to Cal. Rev. & Tax. Code § 2187 with respect to the Debtor's real properties commonly known as 906 Almond Street, Yuba City, CA (the "Almond Property"), 930 Franklin Avenue, Yuba City, CA (the "Franklin Property"), 906 Clark Avenue, Yuba City, CA (the "906 Clark Property") and 912 Clark Avenue, Yuba City, CA (the "912 Clark Property") as a result of the non-payment of real property taxes when due. The creditor has filed amended proof of claim number 4-2 in which it asserts a \$11,121.20 secured claim and a 18.00% annual interest rate. The creditor states that the plan lists it in Class 2 with an incorrect claim amount and that the correct claim against the Debtor for pre-petition taxes is an aggregate amount of \$11,121.29. The plan proposes to make monthly payments to creditor in the amount of \$132.00 per month for 60 months, which creditor states totals only \$7,920.00. Debtor has filed a response acknowledging the total debt owing at \$11,121.29 and stating that the payments to creditor will remain at \$132.00 at 18% interest with a lump sum payment within 12 months.

Sutter County Tax Collector also raises the objection that this plan and bankruptcy case were not filed in good faith due to Debtor's history of filing 5 bankruptcy cases within the last 9 years which largely were non-productive. Sutter County Tax Collector cites extensively to the last bankruptcy case, no. 17-20943, and Chief Judge Ronald Sargis' findings that the Debtor has experimented with various chapters of the Bankruptcy Code and has a history of proposing unconfirmable plans. See dkt. 90, pp. 6-9. However, in this case at least, the Debtor has made a good faith effort to succeed insofar as she moved to sell one of her properties, and that motion was granted. Whether she can confirm a plan remains to be seen but this plan is not confirmable and will not be confirmed for the reasons further stated below.

Second, the Debtor has not provided the Trustee with requested copies of certain items related to her operation of MJM Services, Tacos Azteca, and Abraham's Tree Services. Specifically, the Trustee has not received business examination checklists for each business, a business license for Abraham's Tree Service, and profit and loss statements for each business. Debtor has filed a response stating that she only owns and operates MJM Services and has provided the Trustee with a Class 1 Checklist and profit and loss statements. Debtor asserts that she does not receive income from Tacos Azteca and Abraham's Tree Service. Debtor states that she provided the Trustee with copies of income statements via email on July 3, 2018.

Third, Trustee states that Debtor's attachment to Schedule I detailing gross business and rental income, expenses, and net income does not bear resemblance to the information listed on Schedule I and does not specify which of Debtor's businesses this represents. Debtor has filed a response stating that the attachment pertains to the business income from MJM Services.

Fourth, feasibility depends on the granting of a motion to sell Debtor's real property located at 232 South Mirage Avenue, Lindsay, CA (the "Mirage Property") since the Debtor is pledging the money received from the sale to fund her plan and pay creditors. That motion was heard and granted on July 3, 2018.

Fifth, the plan is not feasible because Debtor proposes to fund this plan largely through the speculative sale of properties as well as an easement contract with

Caltrans. There is no admissible evidence filed with Debtor's motion showing that the Debtor will be able to sell two remaining properties: 232 S. Elmwood, Lindsey, CA and 251 S. Elmwood, Lindsey, CA. Additionally, the Debtor has not provided evidence of a signed and dated contract between Caltrans and Debtor. Debtor's response states only that the parties are still in negotiations but is moving forward.

Because the plan relies largely on the speculative sale of the remaining two properties and the easement contract with Caltrans, the amended plan is not feasible. The plan does not comply with 11 U.S.C. §1325(a)(6) and will not be confirmed.

The court will enter an appropriate minute order.

31. [18-21193](#)-B-13 FERNANDO ROJAS  
[JPJ](#)-2 Richard L. Jare

OBJECTION TO CLAIM OF CAVALRY  
INVESTMENTS, LLC, CLAIM NUMBER  
2  
5-7-18 [[32](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

Trustee's Objection to Allowance of Claim of Cavalry Investments, LLC 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. 2-1 of Cavalry Investments, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Claim No. 2-1. The claim is asserted to be in the amount of \$1,689.51. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about October 15, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 1, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

32. [17-26199](#)-B-13 HOWARD/CLARALYN SANT  
[JPJ](#)-1 Peter L. Cianchetta

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 4-1  
5-17-18 [[34](#)]

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 4-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$4,644.96. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about August 30, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 18, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

BAYVIEW LOAN SERVICING, LLC  
VS.

**Final Ruling:** No appearance at the July 10, 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 grant 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 provided the Declaration of Brian Nwabara to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Nwabara Declaration states that there are 5 post-petition defaults, with a total of \$7,508.00 in post-petition payments past due. Additionally, there is \$423.78 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt owed to Movant and secured by this Property is determined to be \$395,503.51 as of May 10, 2018, as stated in the Nwabara Declaration. The value of the Property is determined to be \$188,400.00 as stated in Schedules A and D filed by Debtor.

#### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

34. [18-22404](#)-B-13 ALICE SHARP  
[JPJ](#)-1 Steele Lanphier

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-1-18 [[17](#)]

**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, although the Debtor did not appear at the meeting of creditors set for May 31, 2018, the Debtor and counsel did appear at the continued July 5, 2018, meeting of creditors as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,252.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$1,252.00 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 Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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

Fifth, the Debtor failed to disclose the filing of previous case no. 17-27948 on this petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed April 25, 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.

35. [17-23520](#)-B-13 REV ANDERSON  
[KG-4](#) Kayla M. Grant

MOTION TO SELL FREE AND CLEAR  
OF LIENS O.S.T.  
7-2-18 [[58](#)]

**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 matter will be determined at the scheduled hearing.

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. Rev Kenneth Jeffery Anderson ("Debtor") proposes to sell the property described as 1130 Waltz Court, Vallejo, California ("Property").

According to the Declaration of Rev Kenneth Jeffery Anderson, the proposed buyer has agreed to purchase the Property for \$390,000.00. Debtor states that the two liens against the Property will be paid in full and that additional creditors will also be paid off.

Although Debtor states that a copy of the accepted counter-offer is filed as Exhibit A, no such exhibit appears on the court's docket. Without a copy of the counter-offer, the court cannot determine whether the proposed sale is in the best interest of the Estate.

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

The matter will be determined at the scheduled hearing.

**Tentative Ruling:** The motion was originally 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 matter will be determined at the scheduled hearing.

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 Mak & 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. Mak & Sons, Corp. is a co-owner of the property and employer to Debtor. Debtor is an employee of Mak & 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, Mak & 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 hearing on July 3, 2018, Spartan Mortgage Services Inc. brought to the court's attention that Mak & Sons, Corp. has been suspended and/or revoked by the Nevada Secretary of State. Additionally, a review of the California Secretary of State website shows a Mak & Sons Co, Inc. as suspended and a Mak & Sons Incorporated as dissolved.

Counsel for the Debtor stated that he understands that Mak & Sons, Corp. cannot do business in California if it is not a valid corporation but that he was assured by Mak & Sons, Corp. representatives that its business status will be reinstated.

The court continued the matter to July 10, 2018, at 1:00 p.m. to provide Debtor additional time to present evidence that Mak & Sons, Corp. is a legitimate corporation in either Nevada or California.

The matter will be determined at the scheduled hearing.

**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). A written reply has been filed to the objection.

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

First, although the Debtor did not appear at the meeting of creditors set for May 31, 2018, the Debtor and counsel did appear at the continued July 5, 2018, meeting of creditors as required pursuant to 11 U.S.C. § 343.

Second, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes improper deductions at lines 33 and 34. According to the plan, the Debtor intends to surrender collateral listed as household goods held by Progressive Leasing and Purchasing Power, LLC. Items that a Debtor intends to surrender are not necessary for his support or maintenance and cannot be included in the calculation of disposable income. *American Express Bank, FSB v. Smith (In re Smith)*, 418 B.R. 359, 369 (9th Cir. BAP 2009). Additionally, the Debtor has claimed a deduction for public transportation at Line 15 in the amount of \$189.00. The Debtor has not provided documentation showing that she uses public transportation in addition to using her vehicle. With these corrections, the Debtor's correct monthly disposable income is \$413.41 and the Debtor must pay no less than \$24,804.60 to general unsecured creditors. The plan proposes a dividend to Class 7 general unsecured creditors of 0%.

Debtor filed a response addressing the Trustee's concerns and stating that she will file an amended plan.

The plan filed May 2, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

38. [18-22724](#)-B-13 ANGELO NOLASCO AND DEBRA CONTINUED OBJECTION TO  
[JPJ](#)-1 RODRIQUEZ-NOLASCO CONFIRMATION OF PLAN BY TRUSTEE  
Peter G. Macaluso JAN P. JOHNSON  
6-6-18 [[16](#)]

**Tentative Ruling:** This matter was continued from July 3, 2018, to provide the Chapter 13 Trustee additional time to confirm whether Debtors are entitled to § 704 exemptions.

The matter will be determined at the scheduled hearing.

The Chapter 13 Trustee objected to confirmation on grounds that 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. 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.

At the time of the July 3, 2018, hearing, the Trustee stated on the record in open court that the Debtors did file an amended Schedule C claiming an exemption of \$175,000 under California Code of Civil Procedure § 704. The Trustee stated that it was amenable to a continuance of its objection to confirm whether Debtors are entitled to that exemption.

The matter will be determined at the scheduled hearing.

39. [18-22728](#)-B-13 DAN/KATHRYN BOHAN  
[JPJ](#)-1 Timothy J. Walsh

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-1-18 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

First, the Debtors and their counsel did not appear at the continued meeting of creditors set for July 5, 2018, at which time the Debtors were to provide the Chapter 13 Trustee with their last 4 years of tax returns pursuant to 11 U.S.C. § 1308.

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

Third, the Debtors failed to disclose a previous petition filed within the eight-year period prior to the filing of this petition. See case no. 13-21923. The Debtors have not fully and accurately provided all information required on the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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.

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.

**Tentative Ruling:** This matter was continued from July 3, 2018, to provide Debtor additional time to recalculate plan payments. The Motion to Confirm the Modified Plan was originally 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 matter will be determined at the scheduled hearing.

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. At the July 3, 2018, hearing, Debtor requested additional time to recalculate plan payments.

The matter will be determined at the scheduled hearing.

41. [18-22770](#)-B-13 GREGORY HUTCHINSON  
[JPJ](#)-1 Seth Hanson

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-13-18 [[12](#)]

CONTINUED TO 8/14/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 8/09/18.

**Final Ruling:** No appearance at the July 10, 2018, hearing is required.

The court will enter an appropriate minute order.