

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**August 16, 2016 at 1:00 p.m.**

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- |    |                                |                  |                                 |
|----|--------------------------------|------------------|---------------------------------|
| 1. | <a href="#">15-28906</a> -B-13 | SHELLY CLARK     | ORDER TO SHOW CAUSE RE:         |
|    | SJS-4                          | Scott J. Sagaria | SANCTIONS                       |
|    |                                |                  | 7-22-16 [ <a href="#">110</a> ] |

**Tentative Ruling:** The court issues no tentative ruling. The matter will be determined at the scheduled hearing.

**August 16, 2016 at 1:00 p.m.**

2.     [16-24108](#)-B-13   DAVID MARTIN                                 ORDER TO SHOW CAUSE  
                              Michael O'Dowd Hays                         7-20-16 [[14](#)]

**Tentative Ruling:** The court issues no tentative ruling. The matter will be determined at the scheduled hearing.

3. [16-23911](#)-B-13 DONNA ROCK  
JPJ-1 Peter G. Macaluso  
**Thru #4**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-28-16 [[19](#)]

**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 is delinquent to the Chapter 13 Trustee in the amount of \$1,800.00, which represents the first plan payment that was due July 25, 2016. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a cure of the post-petition arrearage owed to Nationstar including a specific post-petition arrearage amount, interest rate, and monthly dividend.

The plan filed June 16, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

4. [16-23911](#)-B-13 DONNA ROCK  
PPR-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
7-12-16 [[13](#)]

**Tentative Ruling:** The Objections to Proposed Chapter 13 Plan and Confirmation Thereof 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 overrule the objection but deny confirmation of the plan for reasons stated at Item #3.

U.S. Bank National Association ("Creditor") objects to confirmation of the plan on the ground that the plan does not cure the pre-petition arrearage of approximately \$19,505.36 owed to Creditor. The Debtor has filed a response stating that she does not oppose increasing the scheduled arrears to \$19,505.36 and increasing the monthly dividend to account for the higher arrearages.

However, the objection to confirmation filed by the Chapter 13 Trustee was sustained at Item #3. Therefore, the plan filed June 16, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Creditor's objection is overruled but the plan is not

confirmed. No other relief is granted.

The court will enter an appropriate minute order.

5. [12-27513](#)-B-13 GREGORY/DEBORAH VEATCH MOTION TO MODIFY PLAN  
PGM-1 Peter G. Macaluso 7-12-16 [[62](#)]

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on July 12, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 July 12, 2016, 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 Value Secured Portion of Claim of Wells Fargo Bank, N.A., dba WFDS has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value without prejudice.

The motion filed by Debtor to value the secured claim of Wells Fargo Bank, N.A., dba WFDS ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Chevy Camaro V6 ("Vehicle"). The Debtor asserts that the Vehicle has 104,755 miles and several wear and tear and maintenance needs. The Debtor seeks to value the Vehicle at a replacement value of \$9,165.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Wells Fargo Bank, N.A., dba WFDS is the claim which may be the subject of the present motion.

#### **Opposition**

Creditor has filed an opposition asserting that the Vehicle has a replacement value of \$15,000.00 based on the value provided in the NADA Used Car Guide.

#### **Discussion**

The value offered by the Creditor, \$15,000.00, is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. <http://www.nadaguides.com>.

The clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This may not be the case. Second, 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." What must be determined, therefore, is what a retailer would charge for this particular Vehicle as it is.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. There is no evidence from the Debtor on this point. The Debtor states only that its valuation takes into consideration the mileage and several wear and tear and maintenance needs. The standard is what a used car dealer would sell the vehicle for to the Debtor.

While neither parties have persuaded the court regarding their position of the value of the vehicle, the debtor has the burden of proof. Therefore, the motion will be denied without prejudice. This matter will also be set for an evidentiary hearing to be held on September 5, 2016, at 10:00 a.m. at which time the court will require live witness

testimony.

The court will enter an appropriate minute order.

7. [16-20118](#)-B-13 LESTHER GASTELUM AND ALMA CONTINUED MOTION TO CONFIRM  
PGM-1 SAQUELARES PLAN  
Peter G. Macaluso 5-25-16 [[61](#)]

**Tentative Ruling:** The Motion to Confirm Debtors' First Amended Plan Filed on May 25, 2016, was originally set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Trustee and a response was filed by the Debtors.

The court's decision is to deny the motion without prejudice and the plan is not confirmed.

This matter was continued from July 19, 2016, and again for a final continuance to August 16, 2016. The Trustee stated on the record in open court that there are still issues with the profit loss statement, statement of financial affairs, and means test. The matter was continued to allow the Debtor additional time to resolve the Trustee's issues. Nothing new has been filed.

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



8. [11-29224](#)-B-13 DAVID/MARITZA FLORES  
PLC-7 Peter L. Cianchetta

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE PAYMENT RULE  
3002.1  
7-28-16 [[111](#)]

**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 for determination of final cure and payment.

Debtors seek an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the plan, pursuant to Fed. R. Bankr. P. 3002.1. On June 30, 2016, the Chapter 13 Trustee filed a Notice of Final Cure Payment for Wells Fargo Home Mortgage. In response, Wells Fargo Home Mortgage ("Creditor") filed a response, which according the Debtors claimed that a post-petition payment of \$1,604.22 was owed for June 15, 2016.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether a debtor has cured the default and paid all required post-petition amounts.

A review of the Notice of Final Cure Payment (Dkt. 105) indicates that Debtors have made all payments under the plan for arrears to the Creditor. Additionally, nowhere in the Creditor's Response to Notice of Final Cure Payment is there any indication that \$1,604.22 is owed. Indeed, Part 1 indicates that as of July 15, 2016, the Creditor agrees that the Debtors have paid in full the amount required to cure the default on the Creditor's claim and that the Debtors are current with all post-petition payments consistent with § 1322(b)(5). Moreover, Parts 2 and 3 state that \$0.00 is due by the Debtors.

If there is \$1,604.22 in post-petition payment that is owed, that amount is disallowed in its entirety.

The court finds that the Debtors have cured the mortgage default to Wells Fargo Bank, N.A. as required by the Chapter 13 Plan.

The court will enter an appropriate minute order.

9.     [16-21924](#)-B-13     ANDREW COLEMAN                     MOTION TO CONVERT CASE TO  
         JPJ-2             Chad M. Johnson                 CHAPTER 7 AND/OR MOTION TO  
   DISMISS CASE  
   7-19-16 [[27](#)]

CONTINUED TO 10/11/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S  
MOTION TO CONFIRM AMENDED PLAN HEARD ON THE SAME DATE AND TIME.

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

10. [16-24124](#)-B-13 JOHN DUCHARME  
JPJ-1 Mikalah R. Liviakis  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-27-16 [[13](#)]

CONTINUED TO 9/06/16 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS HELD ON 9/01/16.

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

11. [16-23830](#)-B-13 DIANA HANNA OBJECTION TO CONFIRMATION OF  
JPJ-1 Mohammad M. Mokarram PLAN BY JAN P. JOHNSON  
7-28-16 [[15](#)]  
DEBTOR DISMISSED: 07/30/2016

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

The case was dismissed on July 30, 2016, and the objection is dismissed as moot.

12. [16-20831](#)-B-13 JANICE MARSTON  
SLC-2 Mikalah R. Liviakis

MOTION FOR COMPENSATION FOR  
SHERI L. CARELLO, CHAPTER 7  
TRUSTEE  
7-12-16 [[44](#)]

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

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

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

#### **FEES AND COSTS REQUESTED**

Chapter 7 Trustee Sheri L. Carello has filed a approval of compensation. The requested compensation consists of \$1,137.50 for fees and \$0.00 for expenses for a total of \$1,137.50 for the period of February 15, 2016, through and including June 29, 2016. The compensation represents 3.50 hours of services from 1.50 hours for work related to drafting, reviewing, filing, and serving an objection to Debtor's claims of exemptions and 3.50 hours (and not 3.6 hours) for work related to general case administration.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under

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this title.

Further, the court shall not allow compensation for,

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

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

#### **BENEFIT TO THE ESTATE**

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

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

*Id.* at 959.

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

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay as an administrative expense, the following amounts as compensation to this professional in this case:

Fees	\$1,137.50
Costs and Expenses	\$ 0.00

The court will enter an appropriate minute order.

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

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

The Bankruptcy Code permits debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 3647 Jenny Lind Avenue, North Highlands, California ("Property"). The Property was owned by Joint Debtor prior to her current marriage and thus the closing statement shows her name as Cathy Graham.

The proposed purchasers of the property have agreed to purchase the Property for \$323,500.00. The Declaration of Cathy Millhouse states that the sale is all cash and is an arm's length transaction. A first deed of trust on the property is held by Wells Fargo Home Mortgage, a subsidiary of Wells Fargo Bank, N.A., in the approximate amount of \$132,761.00. A second deed of trust on the property is held by Green Tree Servicing, LLC, in the approximate amount of \$57,301.00. Upon completion of the sale, all lien holders and other creditors with an interest encumbering the property shall be paid in full in accordance to the agreed upon terms of the sale, as well as costs of sale such as escrow fees, title insurance and broker's commissions. After deducting costs, the total due to the Joint Debtor at closing is \$106,623.79.

Wells Fargo Bank, N.A. has filed a response stating its conditional non-opposition is contingent upon its secured claim being paid off in full subject to a proper payoff quote, or that any sale short of full payoff will be in accordance with any approval by Wells Fargo Bank, N.A. In the event the sale does not take place, Wells Fargo Bank, N.A. states that it will retain its lien for the full amount due under the note. Additionally, Wells Fargo Bank, N.A. requests that each party bear their own attorney's fees and costs.

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.

14. [12-27542](#)-B-13 SEVERINO/CRISTINA ETORMA MOTION TO MODIFY PLAN  
MEC-2 Melba Espartero-Cawit 6-27-16 [[65](#)]

**Final Ruling:** No appearance at the August 16, 2016, 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 20, 2106, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.



15. [16-24044](#)-B-13 VICTORIA KIRCHIK  
EGS-1 Shawn R. Parr  
**Thru #16** OBJECTION TO CONFIRMATION OF  
PLAN BY BAYVIEW LOAN SERVICING,  
LLC  
7-19-16 [[27](#)]

**Tentative Ruling:** The Objections to Confirmation of Debtor's Proposed Chapter 13 Plan and Confirmation Thereof 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.

The objecting creditor holds a deed of trust secured by the Debtor's residence and asserts approximately \$78,974.54 in pre-petition arrearages. The creditor states that it is in the process of filing a proof of claim and supports its motion with the Declaration of Diane Barron. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed. No other relief is granted.

The court will enter an appropriate minute order.

16. [16-24044](#)-B-13 VICTORIA KIRCHIK  
JPJ-1 Shawn R. Parr  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-27-16 [[32](#)]

**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 did not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a), Form No. EDC 3-080-12. The Debtor instead used a plan from the United States Bankruptcy Court for the Northern District of California.

Second, the Debtor has not filed the Eastern District Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Therefore, the request for attorney's fees and costs in connection with confirmation of the plan must proceed by separate motion pursuant to 11 U.S.C. § 330.

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 fully and accurately provided all information required by

the petition, Schedules, and Statement of Financial Affairs since she did not disclose her income from a VA stipend. 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).

Fifth, the Debtor's Schedule J filed June 21, 2016, shows a disposable income of -\$4,0678.27 yet the Debtor is proposing a plan payment of \$50.00. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 11325(a)(6).

The plan filed June 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

17. [11-27847](#)-B-13 TIMOTHY/LYDIA MANSOURI CONTINUED MOTION FOR HARDSHIP  
JHH-6 Judson H. Henry DISCHARGE  
**Thru #18** 7-5-16 [[142](#)]

**Final Ruling:** No appearance at the August 16, 2016, hearing is required. The court will file a written decision prior to the hearing.

18. [11-27847](#)-B-13 TIMOTHY/LYDIA MANSOURI CONTINUED MOTION TO DISMISS  
JPJ-2 Judson H. Henry CASE  
7-7-16 [[146](#)]

**Final Ruling:** No appearance at the August 16, 2016, hearing is required. The court will file a written decision prior to the hearing.

19. [16-23751](#)-B-13 RITA SCHROEDER  
JPJ-1 Pro Se  
**Thru #20**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
7-27-16 [[23](#)]

**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 is delinquent to the Chapter 13 Trustee in the amount of \$100.00, which represents the first plan payment due July 25, 2015. The Debtor does not appear to be able to make plan payments proposed and has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor did not appear at the duly noticed first meeting of creditors set for July 21, 2016, as required pursuant to 11 U.S.C. § 343.

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 plan does not specify a minimum dividend to Class 7 general unsecured creditors and is thus incomplete.

Sixth, the plan does not state a monthly contract installment amount for Class 1 creditor Caliber Home Loans.

The plan filed June 10, 2016, 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.

20. [16-23751](#)-B-13 RITA SCHROEDER  
MJ-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK TRUST, N.A.  
7-28-16 [[27](#)]

**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 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 but deny confirmation of the plan for reasons stated at Item #19.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$279,613.92 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the

claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item #19, the plan filed June 10, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed. No other relief is granted.

The court will enter an appropriate minute order.

NAZANIN ATTAIE VS.

**Final Ruling:** No appearance at the August 16, 2016, hearing is required.

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

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

Nazanin Attaie ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3180 Black Oak Drive, Rocklin, California (the "Property"). Movant has provided the Declaration of Nazanin Attaie to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Attaie Declaration states that Movant is the legal owner of the property and that Debtors are tenants who have failed to pay the balance of pre-petition rent for the months of March 2016, April 2016, and part of May 2016 in the total sum of \$5,936.94. Additionally, Movant states that Debtors have failed to pay the balance of post-petition rent for part of May 2016, July 2016, and August 2016 in the total sum of \$5,510.95. Movant seeks to proceed with an unlawful detainer action filed in state court.

#### **Discussion**

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtors would be at best tenant at sufferance. Movant asserts that the stay must be lifted so that it may proceed with the prosecution of a state court unlawful detainer action. However, Movant provides no evidence that it has already commenced an unlawful detainer action.

Movant has provided a copy of the lease agreement signed by Debtors to substantiate the Movant's claim of ownership. Exh. A, Dkt. 23. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

22. [16-23654](#)-B-13 JOANN GOWANS  
JPJ-1 Scott D. Shumaker

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-27-16 [[36](#)]

**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.

The plan does not provide treatment for the priority claims filed by Internal Revenue Service and Franchise Tax Board in the amounts of \$18,399.34 and \$11,318.15, respectively. The plan does not comply with 11 U.S.C. § 1322(a)(2).

The plan filed June 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.



23. [16-23958](#)-B-13 GRACE KENNEDY  
EAT-1 Gary S. Saunders  
**Thru #24**

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO FINANCIAL  
CALIFORNIA, INC.  
7-28-16 [[16](#)]

**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 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 but deny confirmation of the plan for reasons stated at Item #24.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$88,800.35 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed pre-petition arrearages. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

For reasons stated at Item #24, the plan filed June 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

24. [16-23958](#)-B-13 GRACE KENNEDY  
JPJ-1 Gary S. Saunders

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-28-16 [[19](#)]

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

Second, the plan will take approximately 600+ months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the plan payment in the amount of \$1,600.00 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 \$4,880.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. Debtor's attorney's fees exceed this amount.

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

The plan filed June 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

25. [14-23364](#)-B-13 CHARLES/KRISTIN STOUT  
JPJ-2 Peter G. Macaluso

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
7-19-16 [[32](#)]

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

The court's decision is to convert this Chapter 13 case to a Chapter 7.

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

First, the Debtors have failed to provide the Trustee with a Declaration of the Joint Debtor regarding her employment status or pay stubs for the Joint Debtor since she appears to have been recently employed. The Debtors have not cooperated with the Trustee as necessary to enable the Trustee to perform his duties as required pursuant to 11 U.S.C. § 521(a)(3). Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (6).

Second, according to Schedules A, B, and C of the petition filed April 1, 2014, the value of the non-exempt equity in the Debtors' estate is \$32,720.00. After accounting for Chapter 7 Trustee fees estimated at \$5,550.00, the total of non-exempt equity in the estate is \$27,170.00.

#### **Response by Debtors**

The Debtors have filed a response requesting that the Trustee's motion be denied because they will file, set, and serve a modified plan and be current under the modified plan before the hearing on this matter. Nothing appears to have been filed with the court.

#### **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 convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtors have failed to provide the Trustee with all required documents and there is equity in the estate for the benefit of creditors. Although the Debtors filed a response asserting that they will resolve the Trustee's issues, nothing appears to have changed in the case. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

26. [16-23766](#)-B-13 EDWARD GRINDROD  
JPJ-1 Scott D. Shumaker

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-27-16 [[28](#)]

**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 is delinquent to the Chapter 13 Trustee in the amount of \$2,047.00, which represents the first plan payment due July 25, 2016. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, 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 plan does not specify a cure of the post-petition arrearage owed to Seterus Inc. including a specific post-petition arrearage amount, interest rate, and monthly dividend.

The plan filed June 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

27. [16-20570](#)-B-13 STEPHANIE RUSCIGNO  
JPJ-2 Peter G. Macaluso  
**Thru #28**

MOTION TO RECONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
7-15-16 [[100](#)]

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

The court's decision is to dismiss this Chapter 13 case.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted or in the alternative dismissed based on grounds that the Debtor has failed to take further action to confirm a plan in this case, thus causing unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1), and that the Debtor is delinquent to the Trustee.

The Debtor has filed a response stating that she is current on plan payments but has not taken further action to confirm a plan. The Debtor further states that there are no assets for a conversion to a Chapter 7 because her real property is valued at \$250,000.00, the first deed of trust is \$150,000.00, and the homestead exemption is \$100,000.00. Furthermore, her personal property totaling \$4,550.00 is exempt.

#### **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 Debtor has not taken further action to confirm a plan and there are no assets for a conversion to and liquidation in a Chapter 7. The court had previously sustained DFI Funding's objection to confirmation of the Debtor's plan on the basis that the plan did not provide for payment of DFI's fully-matured secured claim over the plan term and because the plan was not feasible based on the Debtor's proposed plan payment of \$1,500.00. Dkt. 84. In order to overcome that objection and confirm an amended plan, and short of a payoff or modification which there is no evidence of either, the Debtor must be able to fund a plan that provides for distributions to DFI equal to 1/60th of its fully matured claim. According to DFI, that amount is at least \$5,206.63. Dkts. 93, 95.

That does not appear to be possible and the recent payments the Debtor made to the trustee, \$350.00 on August 1, 2016, and the \$1,800.00, do not appear to make that possible. That makes any further attempt to confirm a plan futile which means further delay is prejudicial to creditors, DFI included.

That said, if the Trustee has sufficient funds on hand to provide a \$5,206.83 distribution to DFI, the motion to dismiss or convert will be denied and the Debtor will have until August 31, 2016, to file, serve, and set for hearing an amended plan and motion to confirm it. If not, it will be granted under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors.

The court will enter an appropriate minute order.

28. [16-20570](#)-B-13 STEPHANIE RUSCIGNO  
MMW-3 Peter G. Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-15-16 [[93](#)]

DFI FUNDING, INC. VS.

**Tentative Ruling:** The Motion for Relief From Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). A response was filed by the Chapter 13 Trustee and an opposition was filed by the Debtor.

If the Debtor meets the conditions included in Item #27, the motion will be denied without prejudice. Otherwise, if this case is dismissed per Item #27, the motion will be denied as moot.

The court will enter an appropriate minute order.



29. [16-23970](#)-B-13 RUSSELL/VICTORIA THOMPSON OBJECTION TO CONFIRMATION OF  
JPJ-1 Cindy Lee Hill PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-27-16 [[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). 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 Debtors did not appear at the meeting of creditors set for July 21, 2016, as required pursuant to 11 U.S.C. § 343.

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 maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. Debtors' attorney's fees exceed this amount.

The plan filed June 20, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

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

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

The plan will take approximately 61 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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.

31. [13-31486](#)-B-13 CHARLES/CARMEN PUENTES MOTION TO MODIFY PLAN  
RAC-4 Richard A. Chan 7-8-16 [[49](#)]

**Final Ruling:** No appearance at the August 16, 2016, 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 July 8, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

32. [16-23988](#)-B-13 CHARLES/RUTH ANN HINES  
AP-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY BENEFICIAL FINANCIAL I  
INC  
7-27-16 [[16](#)]

**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 and confirm the plan.

The objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor asserts \$5,215.26 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed June 20, 2016, 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.

33. [16-23189](#)-B-13 ANTHONY DAY  
JPJ-1 Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-22-16 [[15](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally 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 was filed to the objection.

At the July 19, 2016, hearing, the Trustee represented that the issues raised in its objection were resolved. However, the Trustee stated on the record in open court that it objects to the voluntary retirement contributions listed at Line 41 of Form 122C-2. Dkt. 22. The matter was continued to August 2, 2016, to allow the Debtor additional time to resolve the Trustee's issue. At that hearing, Debtor's counsel requested additional time to resolve the issues raised. Nothing new appears on the docket as of August 15, 2016.

The matter will be determined at the scheduled hearing.

34. [16-23799](#)-B-13 MELISSA REGALA  
DVW-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK N.A.  
7-28-16 [[26](#)]

**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 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.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$8,591.65 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 13, 2016, 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.