UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 22, 2017 at 1:00 p.m.

1.	17-22702-B-13 NF-1	CHRISTOPHER CANTERBURY AND REBECCA SCHINDLER Nikki Farris	MOTION TO CONFIRM PLAN 7-19-17 [30]

Final Ruling: No appearance at the August 15, 2017, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated July 18, 2017, was not set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 34-days' notice was provided.

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

The court will enter an appropriate minute order.

2. 14-29215-B-13 JEFFERY/SANDRA THOMAS CONTINUED MOTION TO MODIFY PLAN
JPJ-3 Mary Ellen Terranella 5-24-17 [91]

Tentative Ruling: The Trustee's Motion for Post-Confirmation Modification of the Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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.

This matter was continued from July 17, 2017, and again from August 7, 2017, to allow the Debtors to file any documentation to substantiate their expenses. Any additional evidence by the Debtors was to be filed by August 10, 2017, and any response by the Trustee was to be filed by August 17, 2017. The Debtors and Trustee filed a supplemental declaration and response, respectively.

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

First, the expense on amended Schedule J filed July 17, 2017, in the amount of $500.00 for unreimbursed occupation expenses is overstated. This amount was previously calculated by the Debtor in the declaration filed July 28, 2017, as including the necessity of purchasing an additional weapon each year. However, the declaration filed on August 10, 2017, states that an additional weapon is purchased every other year. Moreover, the Debtor has already purchased a rifle in October 2016 for $4,095.45 and there is nothing in the supplemental declaration that indicates a similar weapon will need to be purchased in the next two years. The Debtor has substantiated unreimbursed occupation expenses at most of $200.00 per month.

Second, by the Debtors' own admission in the supplemental declaration, they have additional monthly disposable income of $245.00 that is currently allocated as a voluntary retirement contribution until April 2018. Debtors' mortgage payment will not increase until May 2018.

Third, the Debtors have not fully substantiated any increase in the monthly expense for vehicle insurance. Debtors state that they project an increase in vehicle insurance when their youngest son turns 16. However, Debtors also state that they do not know how much the increase will be. Schedule J filed July 17, 2017, shows an expense for vehicle insurance of $357.00 per month, or $4,284.00 per year, which already appears to include coverage for the 16-year-old son.

The Trustee's motion to modify is granted in part and plan payments shall be increased to $2,289.00 per month from June 25, 2017, through April 25, 2018, and $2,089.00 per month commencing May 2018 for the remainder of the 60 months plan. It is further ordered that the Debtors shall turnover all tax refunds received for the remainder of the 60-month plan.

The court has reviewed and considered all of the parties' arguments and evidence. The court does not intend to modify this tentative absent compelling and unforeseen circumstances.

The court will enter an appropriate minute order.

3. 16-26328-B-13 LAURA/SANDRA FACINO MOTION TO MODIFY PLAN
ALF-1 Ashley R. Amerio 7-18-17 [27]

Final Ruling: No appearance at the August 22, 2017, hearing is required.

Debtors' Motion to Confirm First 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 July 18, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

4. 17-23028-B-13 LESIA BANADA
CPG-2 Pro Se

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-17-17 [45]

EJ VENURES, LLC VS.
DEBTOR DISMISSED: 06/28/2017

Final Ruling: No appearance at the August 22, 2017, hearing is required.

The Motion to Annul Stay by EJ Ventures, LLC 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 to annul stay and the automatic stay shall be annulled retroactive to the petition date .

EJ Ventures, LLC ("Movant") seeks to annul the stay to validate a foreclosure sale conducted on May 3, 2017, without notice of bankruptcy, pertaining to real property located at 7650 Poppy Way, Citrus Heights, California ("Property"), that was sold to Movant. Movant also seeks an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3) to the extent it would be applicable to annulment.

Movant has provided the Declaration of Ionita Aldea to support its motion. The Aldea Declaration states that the Property had a negative equity of $329,661.58 as of the date of the foreclosure sale. The value of the property was estimated to be $450,000.00 and the amount owed under the foreclosed deed of trust as reflected in the Trustee's Deed was $779,661.58.

The foreclosure sale was conducted on May 3, 2017, at 11:18 a.m. and the Property was sold to Movant for $320,100.00. The Trustee's Deed was issued to Movant on May 5, 2017, and Movant recorded it in the official records of Sacramento County on May 16, 2017.

On the same day of and just forty-one minutes before the scheduled foreclosure sale, the Debtor filed the above entitled bankruptcy. Movant asserts that it was unaware of the bankruptcy at the time of the sale. Movant further contends that it did not receive notice of the bankruptcy until May 17, 2017, when the foreclosure trustee telephoned Movant regarding the Debtor's bankruptcy and stated that neither the foreclosure trustee nor lender were aware of the bankruptcy.

Later on May 17, 2017, the foreclosure trustee followed up by email to Movant stating that it was waiting for instructions from the lender on whether the lender would seek annulment or rescind the sale. The lender elected to rescind the foreclosure rather than seek annulment. Movant communicated to the foreclosure trustee that it would seek annulment of the stay.

Movant contends that in the absence of annulment, Movant will lose the benefit of the purchase and the time and funds that could have been used for purchase of another property. Additionally, a new notice of sale would need to be issued, recorded and posted, and another sale would need to be conducted as to the Property.

Discussion

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing,

whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. *Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in *In re Fjeldsted*, 293 B.R. 12 (9th Cir. B.A.P. 2003). The *Fjeldsted* factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

Here, Movant, the foreclosure trustee, and lender had no knowledge of Debtor's bankruptcy because it was filed just forty-one minutes before the scheduled foreclosure proceeding. The Debtor's very action of filing for bankruptcy on the same day and less than an hour before the foreclosure proceeding is evidence of the Debtor's intent to hinder and delay the foreclosure proceeding. The Debtor and her husband have also engaged in bad faith filings over the last seven years by filing 12 bankruptcies during this time. Movant would be prejudiced if the stay is not annulled because it has already purchased the Property for $320,100.00 that could have otherwise been used toward the purchase of other properties. Moreover, based on the Debtor's own schedules, the Property is over-encumbered and there was no equity at the time of the sale.

There is cause for granting of the annulment. Accordingly, the motion is granted for cause pursuant to 11 U.S.C. § 362(d)(1) and the automatic stay shall be annulled retroactive to the petition date so as to apply to the foreclosure sale conducted on May 3, 2017, relating to the Property that was declared sold to Movant.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

The court will enter an appropriate minute order.

5. 17-23032-B-13 HALSTEAD TOM MOTION TO CONFIRM PLAN
RSG-2 Robert S. Gimblin 7-5-17 [22]
Thru #6

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, feasibility depends on the granting of a motion to value collateral for Golden One Credit Union. Although the Debtor filed a motion to value, it was denied at the hearing on August 7, 2017. To date, no other motion to value has been filed.

Second, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors and therefore the plan does not comply with 11 U.S.C. § 1325(b)(1)(B). The plan pays only $33,257.10 (approximately 51%) to unsecured non-priority creditors. Additionally, the Debtor is taking impermissible deductions on his amended Form 122C-2 filed July 5, 2017. The impermissible deductions consist of: Line 30, $47 for unsupported additional food and expenses; Line 41, $125 for unsupported qualified retirement deductions; Line 43, $250 unsupported deductions for special circumstances. Without the impermissible deductions, the Debtor must pay no less than $59,970.60 (approximately 92%) to unsecured creditors.

Third, the Debtor is attempting to claim a Lanning argument stating that he has had an employment change that has resulted in lower income. However, Debtor's Schedule I as supported by his recent pay stubs supports a higher income than what was listed on Form 122C-1. It does not appear that the Debtor's income is decreasing. Therefore, Debtor should have to pay all his disposable income as listed on Form 122C-2. *Compare* dkt. 1, Schedule I, and dkt. 15, exh. A.

Fourth, the plan payment in the amount of $1,364.00 for month 1 and $1,815.00 for months 2-60 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,029. The plan does not comply with Section 4.02 of the mandatory form plan.

Fifth, the plan will take approximately 79 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).

Sixth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,179, which represents approximately 2 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

6. 17-23032-B-13 HALSTEAD TOM — COUNTER MOTION TO DISMISS CASE
RSG-2 Robert S. Gimblin — 8-8-17 [42]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor is 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.

7. 17-23337-B-13 DOUGLAS/TRINA HAMMONS MOTION TO CONFIRM PLAN
RSG-1 Robert S. Gimblin 7-7-17 [19]

Final Ruling: No appearance at the August 22, 2017, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 July 7, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

8.	17-23739-B-13 JPJ-1	JUAN CALZADA Stephen M. Reynolds	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-11-17 [16]

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).

This matter was continued from August 1, 2017, to allow the Chapter 13 Trustee to review the amended schedules filed by the Debtor and then again from August 7, 2017, to allow the Debtor to disclose in his petition the income received from Debtor's Christmas lights business and his interest in two timeshares.

The matter will be determined at the scheduled hearing.

9. 17-25142-B-13 VINCENT/JANICE AYULE MOTION TO EXTEND AUTOMATIC STAY
ULC-1 Ronald W. Holland 8-7-17 [10]

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) 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 July 28, 2017, due to delinquency in plan payments (case no. 16-23438, dkt.37, 40). 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.

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

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

The Debtors assert that they failed to make plan payments in the prior case because Joint Debtor's income was reduced when she went on disability and did not receive any income for a period of time. This was necessary due to a medical condition. Debtors assert that they have made adjustments to their expenses and that Joint Debtor will return to work shortly with all or most of her income restored.

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.

10. 17-23945-B-13 DEMAR RICHARDSON
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-28-17 [22]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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 matter will be determined at the scheduled hearing.

First, Trustee asserts that the plan understates the priority claim of the Internal Revenue Service in Class 5. The proof of claim filed by the IRS shows $13,777.58 as the amount entitled to priority. The Trustee calculates that the plan will take approximately 72 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).

Second, the Trustee contends 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. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $63,531.84. The total amount that will be paid to priority unsecured creditors is only $17,354.69 and the total amount that will be paid to non-priority unsecured creditors is $0.00.

Third, the Trustee states that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Trustee asserts that the Calculation of Disposable Income (Form 122C-2) includes an improper deduction at line 13f for a second vehicle in the amount of $485.00 when Debtor is liable for the debt of only one vehicle according to Schedule D. Additionally, Form 122C-2 overstates the deduction at line 29 for education expenses for children younger than 18. The Debtor is entitled to a deduction for the 14-year-old son of only $128.32 and a deduction for the 17-year-old son of only $32.08. The Trustee calculates that the Debtor's correct monthly disposable income is or should be $676.15 and that the Debtor must pay no less than $40,569.00 to unsecured non-priority creditors.

Response

Debtor has filed a response addressing the three issues raised by the Trustee.

First, Debtor states that the order confirming will provide for the full priority claim of $13,777.58 owed to the Internal Revenue Service in Class 5.

Second, Debtors asserts that the amount it is paying to unsecured creditors is not understated after taking into account the spousal waiver and amended Schedule C filed on August 8, 2017.

Third, Debtor states that it has removed the improper deduction at line 13f of Calculation of Disposable Income (Form 122C-2) but asserts that it should be allowed to include deductions for the second vehicle belonging to Debtor's spouse. Debtor contends that the spouse had approximately $2,000.00 remaining on the car loan at the time the petition was filed and that spreading that amount over 60 months would result in a deduction of $33.33 per month. Debtor has added this amount to line 12 of Form 122-C2 for vehicle operation expense. Also the Debtor has amended Form 122C-2 to reduce the deduction at line 29 for education expenses for children younger than 18 to $160.40. The Debtor calculates that the correct monthly disposable income is or should be $10.00 based on the disposable income on amended Form 122C-2 ($470.00) less line 24

of Schedule J ($460.00)

11.	17-24048-B-13 JPJ-1	RANDY/PATRICIA PELFREY Susan J. Dodds	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-28-17 [20]

Final Ruling: No appearance at the August 22, 2017, hearing is required.

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

The plan filed June 19, 2017, was confirmed by order dated August 16, 2017.

The court will enter an appropriate minute order.

12. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A.
EAT-1 Peter G. Macaluso — 8-3-17 [70]
Thru #15

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 but deny confirmation of the plan for reasons stated at Item #13.

Objecting creditor U.S. Bank holds a deed of trust secured by the Debtors' residence. The creditor does not specify the amount of pre-petition arrearages but asserts an ongoing monthly mortgage payment of $1,999.64. However, the creditor has not filed a proof of claim and provides no evidence to support the amount of the claimed monthly mortgage payment. 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, the plan filed June 13, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #13. The plan is not confirmed.

The court will enter an appropriate minute order.

13. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Peter G. Macaluso — 7-28-17 [65]

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.

Before addressing the objection below, the court clarifies the record in this matter.

With their petition, Debtors Michael and Naomi Alford ("Debtors") filed a Chapter 13 plan on June 13, 2017 (the "Chapter 13 Plan"). Dkt. 5. For whatever reason, the Notice of Meeting of Creditors, which set a confirmation hearing date of August 22, 2017, was not filed until July 6, 2017. Dkt. 40. And it was not served by BNC until July 9, 2017. Dkt. 42.

On June 28, 2017, Wells Fargo Bank, N.A. ("WFB") filed an objection to confirmation of the Chapter 13 Plan. Dkt. 16. On June 30, 2017, WFB filed three more objections to confirmation of the Chapter 13 Plan. Dkts. 23, 24, & 29.[1] Instead of setting those objections for the August 22, 2017, confirmation hearing date WFB specially set the objections so that they all would be heard (and were heard) on July 17, 2017, at 11:00

[1]The objections at dkts. 23 and 24 appear to be the same. Both were filed at 2:35:00 and both concern the same property. As noted below, the objection at dkt. 23 was treated as the operative objection.

a.m.[2] Dkts. 17, 25, 32.

On July 17, 2017, WFB's objection at dkt. 16 was overruled. Dkts. 52, 59. On July 17, 2017, the objections at dkts. 23/24 and 29 were also continued to July 25, 2017, to permit the Debtors to review additional information relevant to the properties at issue in WFB's objections. Dkts. 50, 51.

Further complicating matters, on July 17, 2017, WFB filed another objection to confirmation of the Chapter 13 Plan. Dkt. 44. WFB filed yet another objection on July 19, 2017. Dkt. 53. WFB then set both objections for hearing on August 22, 2017, (dkts. 45, 57), which, as noted above, is the actual confirmation hearing date set back on July 6, 2017, in the Notice of Meeting of Creditors.

Meanwhile, WFB's objections of June 30, 2017 (dkts. 23/24, 29), were again heard on July 25, 2017, at which time they were resolved by terms stated on the record and which also were to be included in the confirmation order. Dkts. 61, 62. Based on that resolution as stated on the record, WFB withdrew its July 17, 2017, and July 19, 2017, objections.

Apparently under the impression that all objections to confirmation were resolved and that WFB's objections were initially set to coincide [and not conflict] with the Chapter 13 Plan confirmation hearing date, on July 25, 2017, the court prematurely ordered that the Chapter 13 plan be confirmed. Dkts. 61, 62, 68, 69. In other words, because the confirmation hearing date was for August 22, 2017, and because on July 25, 2017, there remained time to object to the Chapter 13 Plan, on July 25, 2017, the court should not have ordered the Chapter 13 Plan confirmed.

Therefore, for the foregoing reasons, the orders at dkts. 68 and 69 ordering the confirmation of the Chapter 13 Plan are **VACATED** and the minutes that correspond with orders at dkts. 61 and 62 shall be **AMENDED** to reflect only the resolution of all of WFB's objections to confirmation of the Chapter 13 Plan and the withdrawal of WFB's then pending objections at dkts. 44 and 53 as stated on the record and reflected below.

With the orders ordering confirmation of the Chapter 13 Plan now vacated, this objection and the objection at Item #12 are properly before the court.

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

First, feasibility of the plan depends on the granting of a motion to value collateral for Capital One Auto Finance for a 2013 Dodge Dart. Pursuant to Local Bankr. R. 3015-1(j), the Debtors must file, serve, and set for hearing a valuation motion and the hearing on the valuation must be concluded before or in conjunction with the confirmation of the plan. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value collateral.

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).

The plan filed June 13, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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[2]The July 17, 2017, 11:00 a.m. setting was a special setting of the Chapter 13 calendar by the court.

The court will enter an appropriate minute order.

14. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 7-19-17 [53]
RCO-1 Peter G. Macaluso

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). 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 #13.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at 7281 Jerry Way, Sacramento, California. Creditor's objection relates to its assertion that the Debtors' plan fails to provide for any treatment of its claim. However, this matter was resolved at the hearing dated July 25, 2017, in which Debtors stated on the record in open court that they are not opposed to adding a provision to the order confirming to provide for the following properties as Class 3 claims: 7801 Verna Mae Avenue, 7280 Jerry Way, 7263 Jerry Way, and 7281 Jerry Way. Creditor had stated at that hearing on the record in open court that it was agreeable to the additional provision in the order confirming.

Nonetheless, the plan filed June 13, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #13. The plan is not confirmed.

The court will enter an appropriate minute order.

15. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 7-17-17 [44]
RCO-1 Peter G. Macaluso

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). 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 #13.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at 7263 Jerry Way, Sacramento, California. Creditor's objection relates to its assertion that the Debtors' plan fails to provide for any treatment of its claim. However, this matter was resolved at the hearing dated July 25, 2017, in which Debtors stated on the record in open court that they are not opposed to adding a provision to the order confirming to provide for the following properties as Class 3 claims: 7801 Verna Mae Avenue, 7280 Jerry Way, 7263 Jerry Way, and 7281 Jerry Way. Creditor had stated at that hearing on the record in open court that it was agreeable to the additional provision in the order confirming.

Nonetheless, the plan filed June 13, 2017, does not comply with 11 U.S.C. §§ 1322 and

1325(a) for reasons stated at Item #13. The plan is not confirmed.

The court will enter an appropriate minute order.

16. 17-24252-B-13 CHERYL HANSEN
SS-5 Scott D. Shumaker

DISMISSED: 8/08/17

MOTION TO RECONSIDER AND/OR MOTION FOR RELIEF FROM MISTAKE, SURPRISE OR EXCUSABLE NEGLECT
8-7-17 [55]

Final Ruling: No appearance at the August 15, 2017, hearing is required.

The court entered an order dismissing the case on August 8, 2017, due to Debtor's failure to file and serve on the Trustee required documents on or before July 26, 2017, and for Debtor's failure to file and serve on all parties a proposed Chapter 13 plan and motion to confirm on or before July 26, 2017. The motion to reconsider the court's order denying Debtor's motion to extend automatic stay is dismissed as moot.

The court will enter an appropriate minute order.

17. 17-20554-B-13 VALERIE WALKER MOTION FOR CONTEMPT
KWS-1 Scott J. Sagaria 7-21-17 [28]

Final Ruling: No appearance at the August 22, 2017, hearing is required.

The Debtor's Motion for Order to Show Cause for Contempt of the Automatic Stay and Order Confirming Plan has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor Valerie Walker ("Debtor") moves pursuant to 11 U.S.C. §§ 105, 362, and 1327 for sanctions against Santander Consumer USA, Inc. ("Creditor") based on Creditor's violation of the automatic stay and the confirmation order. Debtor contends that Creditor willfully violated the automatic stay and the confirmation order when it repossessed her 2014 Nissan Altima ("Vehicle") without requesting appropriate relief from the court.

Debtor asserts that Creditor had knowledge of her bankruptcy filed January 27, 2017, because it was sent an electronic notification of the filing by BNC on February 10, 2017, filed Claim No. 1-1 on February 17, 2017, and received disbursements from the Trustee on March 31, 2017, April 28, 2017, and May 31, 2017. Nonetheless, Creditor repossessed the Vehicle without warning from Debtor's home between the evening of Tuesday, July 11, 2017, and early morning of Wednesday, July 12, 2017.

According to the Debtor's declaration, Debtor awoke the morning of July 12, 2017, and found the Vehicle missing. She immediately contacted authorities to report the missing Vehicle and was informed that the Vehicle was repossessed. Debtor then contacted the Trustee's office to confirm that payments were being made to Creditor on the Vehicle, which they were.[3] Thereafter, Debtor contacted her bankruptcy attorney who had no idea or suspicion of the pending repossession.

Debtor's counsel, through his managing paralegal Garrett Lenox, contacted Creditor by telephone and learned that Creditor had erroneously tagged Debtor's bankruptcy case as dismissed and this resulted in the repossession. Mr. Lenox was initially informed that it would take between three to five *business* days before Creditor could return the Vehicle to the Debtor; however, the Vehicle was returned to the Debtor at approximately 1:00 p.m. on July 13, 2017.

Creditor has not filed any opposition to this motion.

Discussion

Federal Rule of Bankruptcy Procedure 9013 is clear, unambiguous, easy to find, and it applies to motions filed in this court. It states that every motion "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Not much too it. Comply with the rule and appropriate relief can be granted, if warranted. Fail to comply with the rule, as in this case, and relief will be denied

[3]The Trustee has filed a response confirming that it has paid Creditor a total of $1,304.37 in principal payments and $545.55 in interest payments to date.

with leave to file a properly stated and supported motion.[4]

From what the court can discern, the Debtor wants Creditor sanctioned for repossessing the Vehicle without first obtaining relief from the court - that much is clear. The Debtor alleges that Creditor violated the automatic stay of "§ 362(a)" and the confirmation order of § 1327(a). Although the grounds for the latter relief are stated with some clarity, the grounds for the former are not. In other words, after thoroughly reviewing the motion, memorandum of points and authorities, and the related declarations, the court is unable to discern which provision of § 362(a) the Debtor charges Creditor with actually violating. The court will not speculate which provision that might be because it counsel's job to clearly state it and not the court's job to identify it for the Debtor and her attorney.

Stay Violation

The Debtor cites *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210 (9th Cir. 2002) and *Abrams v. Sw. Leasing and Rental, Inc.*, 127 B.R. 239, 242-243 (9th Cir. BAP 2010), for the proposition that "[c]reditors have an affirmative duty to ensure they cease sending collection notices to the Debtors." Dkt. 34 at 6:8-10. That may be true. But Creditor did not send the Debtor any collection notices, or anything else for that matter. Indeed, the Debtor states in her declaration that she awoke on the morning of July 12, 2017, to find that "without warning" the Vehicle missing from her home where she parked it the night before. The "without warning" can only mean there was no communication from the Creditor to the Debtor.

Debtor next cites *In re Mwangi*, 432 B.R. 812, 823 (9th Cir. BAP 2010), for the proposition that "[c]reditors who refuse to cease collection of prepetition debt in violation of the stay do so at their own peril and risk of sanction." Dkt. 34 at 6:11-13. Again, true. But the Debtor provides no evidence (much less clear and convincing evidence) that Santander intended to collect a debt owed by the Debtor by repossessing the Vehicle and the court will not infer any such intent from the act of repossession alone. As the Debtor's attorneys are well aware based on their involvement in the appeal, to do so would create the *per ser* violation the Ninth Circuit bankruptcy appellate panel recently rejected in *Keller v. New Penn Financial, LLC et al. (In re Keller)*, 568 B.R. 118, 126 (9th Cir. BAP 2017). Moreover, the evidence that actually is before the court reflects that Creditor did not repossess the Vehicle to collect a debt but did repossess the Vehicle based on a mistaken belief that the Debtor's case was dismissed.

Finally, the Debtor cites *In re Campion*, 294 B.R. 315 (9th Cir. 2003), for the proposition that an employer is responsible for a stay violation regardless of whether an employee or the employer's computer system caused the violation. And again, that may be true. But, as stated above, neither the violation nor the provision of § 362(a) supposedly violated are stated with the requisite particularity or supported by clear

[4] In addition to the legal deficiencies discussed below, the motion and memorandum of points and authorities are factually inconsistent. The motion, filed July 21, 2017, states that "[a]s of the date of [the] motion, Santander has failed to return the [Vehicle] to the Debtor despite multiple requests by Debtor's counsel." Dkt. 28 at 2:9-10. The memorandum of points and authorities, also filed on July 21, 2017, states that "the vehicle . . . was finally returned at approximately 1 p.m. on the 13th [of July]." Dkt. 34 at 5:15-16. Mr. Shumacher's declaration and the memorandum of points and authorities are also factually inconsistent. The former states that Mr. Schumacher spent 11.87 hours litigating the stay (and nonexistent "discharge") violation and incurred $3,915.50 in attorney's fees. Dkt. 31 at 2:6-7, 11-12. The latter states Mr. Schumacher spent 7.38 hours and incurred $2,119.50 in attorney's fees (and even cites to the paragraphs in the declaration which state otherwise). Dkt. 34 at 5:17-18, 21-22. These factual inconsistencies alone make it impossible for the court to ascertain damages even if it were inclined to grant the motion which, for the reasons explained below, it is not.

and convincing evidence. Before someone (or something) may be held liable for a stay violation, the provision of § 362(a) violated must be specifically articulated and the grounds for that violation must be stated with particularity. To repeat, here they are not.

Confirmation Order Violation

The standard for establishing a violation of the confirmation order is stated in *Keller, supra*, as follows:

> A violation of the confirmation order under § 1327(a) is an act of contempt and may be remedied under § 105. *In re Dendy*, 396 B.R. 171, 179–80 (Bankr. D.S.C. 2008). For contempt, the moving party must show by clear and convincing evidence the contemnors violated a specific and definite order of the court. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002).

Keller, 568 B.R. at 128-129.

The problem with the Debtor's argument is that the confirmation order does not require Creditor to do or refrain from doing anything. It is true, as the Debtor points out, that § 5.03 of the confirmed plan requires a creditor to file, set, and serve a motion as required in LBR 9014-1 "[i]f the Debtor *defaults* under [the] plan[.]" (Emphasis added). But here, the Debtor was not in default and, in fact, the Debtor states she confirmed with the Trustee (and the Trustee has also independently confirmed) that payments were being made to Creditor. So whereas § 5.03 applies when there is a *default*, the Debtor was not in default and § 5.03 is inapplicable.

In order to conclude that Creditor violated the confirmation order by repossessing the Debtor's Vehicle without first complying with LBR 9014-1, the court would have to read the plan to say that a creditor must file a motion and set it for hearing under the local rule when the debtor is not in default or, in other words, when the debtor is current on plan payments. That makes no sense.

The point is that the confirmation order is silent regarding the conduct that the Debtor claims violated the confirmation order. That means the court cannot conclude that there has been a violation of any "specific and definite" provision of the confirmation order. *See Keller*, 516 B.R. at 128-129. And that ultimately means the court cannot conclude that Creditor violated the confirmation order.

Conclusion

Based on the foregoing, the Debtor's motion for sanctions for violation of the automatic stay and confirmation order will be denied without prejudice.

18. 17-23654-B-13 SHARON OGBODO MOTION TO CONFIRM PLAN
MJD-1 Matthew J. DeCaminada 7-7-17 [19]
Thru #19

Tentative Ruling: The Motion to Confirm the Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee and Wells Fargo Bank, N.A.

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

First, the Trustee asserts that the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. Debtor states in her response that she transmitted the required Class 1 Checklist on July 14, 2017, and again after receiving Trustee's August 8, 2017, opposition to confirmation.

Second, the Trustee asserts that the plan payment in the amount of $2,501 for month 1 and $3,000 for months 2-5 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,511 for month 1 and $3,040 for months 2-5. In response, Debtor states that she is not opposed to providing for this change in the order confirming and that if there is any deficiency in plan payments for months one through three, that language be added to the order confirming allowing the Debtor to remedy any deficiency on or before the next payment date of September 25, 2017.

Third, the Trustee asserts that the plan fails to properly account for all payments the Debtor has paid to the Trustee to date. The Trustee states that should the court grant the motion to confirm, the Trustee requests that the order properly account for all payments made by the Debtor to date by stating the following: "The Debtor has paid a total of $6,001 to the Trustee through July 2, 107. Commencing August 25, 2017, monthly plan payments shall be $3,000 for the remainder of the plan." The Debtor has filed a response stating that it has no objection to this language but states that monthly plan payments should be $3,040 for the remainder of the plan.

Fourth, creditor Wells Fargo Bank, N.A. asserts that Debtor's plan does not provide creditor with the actual monthly payment of $241.44 and that the Debtor has thus failed to put forth her best effort to repay creditor. In response, Debtor states that creditor's Claim No. 6-1 lists pre-petition arrears of $241.44 and monthly payments of $100.13. Dkt. 47, exh. A. Debtor asserts that the plan has provided for the arrears and maintenance of ongoing note installments.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

19. 17-23654-B-13 SHARON OGBODO COUNTER MOTION TO DISMISS CASE
MJD-1 Matthew J. DeCaminada 8-8-17 [42]

Tentative Ruling: The motion will be denied. The plan is confirmable at Item #18.

The court will enter an appropriate minute order.

20.	17-23660-B-13 AP-1 **And #28**	DIANA BROOKS Candace Y. Brooks	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 7-12-17 [25]

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 matter will be determined at the scheduled hearing.

This matter was continued from August 1, 2017. Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $52,469.90 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.

Despite the valid objection filed by Wells Fargo, the confirmation hearing was continued to August 22, 2017, at 1:00 p.m. due to representation by Debtor's attorney that the Debtor has received an offer to purchase her property and that this may resolve the issues raised by Wells Fargo.

The court will enter an appropriate minute order.

21.	17-23960-B-13 JPJ-1	SHENNEL BEASLEY Matthew J. DeCaminada	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-28-17 [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 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 failed to appear at the meeting of creditors set for July 27, 2017, the Debtor did appear at the continued meeting of creditors set for August 17, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the plan will take approximately 79 months to complete when taking into account that the plan proposes to pay 100% to Class 7 unsecured non-priority creditors and that the total amount owed to unsecured non-priority creditors excluding student loans is $31,487.00. This 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 plan filed June 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

22. 17-21962-B-13 SUANNE GRANDERSON MOTION TO CONFIRM PLAN
GEL-1 Gabriel E. Liberman 7-12-17 [34]

Final Ruling: No appearance at the August 15, 2017, hearing is required.

The Motion to Confirm First [Amended] Chapter 13 Plan, was not set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 41-days' notice was provided.

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

The court will enter an appropriate minute order.

23. 17-24863-B-13 JOSE LOPEZ-NUNEZ MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 8-3-17 [11]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 6, 2017, due to failure to make plan payments (case no. 15-21422, dkt. 37). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the case was filed in order to cure pre-petition arrears owed on his primary residence. Debtor further states that his situation has changed since his job is more steady and he has three roommates that will help with expenses. A review of Debtor's schedules from his current case shows that the Debtor's gross income has increased, his expenses have decreased, and his net income is higher than that in his previous case.

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

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

The court will enter an appropriate minute order.

24. 16-22964-B-13 CHANCE/MICHELE PETERSON
RJ-2 Richard L. Jare

MOTION TO APPROVE LOAN MODIFICATION
8-8-17 [55]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Authorize Modification of Note Secured by Deed of Trust 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 permit the loan modification requested.

Debtors seeks court approval to reduce the interest rate on a note secured by a first deed of trust. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification which will reduce the interest rate from 3.5% to 3.0%, will wrap the arrears into the principal, and extend the maturity to a 363-month term.

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

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

The court will enter an appropriate minute order.

25. 14-32275-B-13 RAY/ROSE DEPRIEST MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie 7-17-17 [75]

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 permit the requested modification and confirm the modified plan.

The court hard entered an order on July 10, 2017, granting Reverse Mortgage Solution, Inc.'s motion for relief from stay with respect to real property commonly known as 428 York Drive, Benicia, California. Since then, creditor and Debtors have entered into a stipulation whereby Debtors are required to amend their plan to provide for payment of creditor's claim in order for Debtors to keep their home. *See* dkt. 87. The Trustee shall disburse $280.00 per month to Reverse Mortgage Solutions, Inc. for post-petition advances of $8,104.07.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

26. 17-25090-B-13 MARTHA RAMIREZ MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 8-2-17 [7]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months and fifth bankruptcy in the last nine years. The Debtor's prior bankruptcy case was dismissed on July 28, 2017, due to delinquency in plan payments and failure to confirm a plan after the court had denied confirmation of Debtor's prior plan (case no. 17-20943, dkts. 82, 85). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the instant case was filed so that Debtor can cure pre-petition arrears owed on th property that contains her primary residence, satisfy tax debt, and retain her multiple properties. Debtor further contends that her situation has changed since her last case was dismissed because she has listed for sale three of her commercial properties. Dkt. 9, exhs. A-C. Additionally, Debtor states that she has been approached by CalTrans with a "Right of Way" contract for the usage of Debtor's property located Yuba County for state highway purposes and which Debtor will receive payment of $20,000 from the state of California. Dkt. 9, exh. D.

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.

27. 17-21397-B-13 STEPHEN/BRENDA VICE — MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella — 7-9-17 [37]

Final Ruling: No appearance at the August 22, 2017, hearing is required.

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

The court's decision is to confirm the 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 July 9, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

28. 17-23660-B-13 DIANA BROOKS MOTION TO SELL O.S.T.
CYB-1 Candace Y. Brooks 8-11-17 [37]
See Also #20

Tentative Ruling: The court issues no 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 motion 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 the property described as 8154 Primoak Way, Elk Grove, California ("Property").

Proposed purchasers Arnold Hy and Lilia Hy have agreed to purchase the Property for $338,000.00. Wells Fargo Bank, N.A., holder of the only deed of trust against the Property, will be paid approximately $195,021.31 from the sale of the Property. Debtor will receive any excess funds from the sale, or payment or monies after all liens, fees, commissions, or other reasons relating to the sale and administrative expenses have been paid. This motion will not have any adverse impact on the estate, Trustee, or other creditors in this bankruptcy, or any discharge that the Debtor may receive in this case.

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.