

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 19, 2017 at 1:00 p.m.

- | | | |
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| 1. | <u>17-27102</u> -B-13 ALESIA GENERA
Mohammad M. Mokarram | ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-1-17 [<u>16</u>] |
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Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on November 27, 2011. While the delinquent installment was paid on December 7, 2017, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

December 19, 2017 at 1:00 p.m.

2. [17-26714](#)-B-13 ELIZABETH GOMEZ ORDER TO SHOW CAUSE - FAILURE
[Thru #3](#) Pro Se TO PAY FEES
11-14-17 [[23](#)]

Tentative Ruling: The Order to Show Cause will be discharged but the case will be dismissed for reasons stated at Item #3.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on November 9, 2011. The delinquent installment was paid on December 5, 2017. Therefore, the Order to Show Cause will be discharged.

Nonetheless, the case will be dismissed for reasons stated at Item #3.

The court will enter an appropriate minute order.

3. [17-26714](#)-B-13 ELIZABETH GOMEZ MOTION TO DISMISS CASE
[JPJ-2](#) Pro Se 12-5-17 [[29](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case 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.

The court's decision is to dismiss the case.

First, the Debtor did not appear at the meeting of creditors set for November 16, 2017, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor has failed to make the first plan payment that was due on November 25, 2017. The amount that was due cannot be determined since the plan fails to specify a plan payment amount. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(4). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(4).

Third, the Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition. Therefore, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

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). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fifth, the Debtor has not provided copies of certain items in connection with her business A-1 Paralegal Service including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements from the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtor has not complied with 11 U.S.C. § 521.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

4. [17-26116](#)-B-13 AARON/PHELICIA MCGEE MOTION TO CONFIRM PLAN
[MWB](#)-1 Mark W. Briden 11-7-17 [[26](#)]

Final Ruling: No appearance at the December 19, 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 7, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5. [15-28620](#)-B-13 AURENCIO/APOLONIA MOTION TO APPROVE LOAN
WW-[2](#) GUEVARRA MODIFICATION
Mark A. Wolff 11-13-17 [[26](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

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

The court's decision is to permit the loan modification requested.

Debtor/s seeks court approval to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtors' mortgage payment from the current \$865.33 a month to \$340.24 a month, which may increase to \$405.21. The modification will be a 40-year amortization of the loan with an interest rate of 2.740% for year one and as high as 3.875% in year three.

The motion is supported by the Declaration of Aurencio Guevarra and Apolonia Guevarra. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Debtors state that although the modification will extend the length of their loan term, they believe it is in their best interest to lower the payments which will give them some funds to use for the maintenance and repair of their home and vehicle.

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.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case 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.

The court's decision is to dismiss the case.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,923.00, which represents approximately 1 plan payment. The Debtor has not made any plan payments since the petition was filed on October 14, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Second, the Debtor did not appear at the meeting of creditors set for November 30, 2017, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

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

Fourth, the Debtor has not 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).

Fifth, 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). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the December 19, 2017, hearing is required.

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

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

Debtors seek retroactive authorization of a loan already obtained against their retirement account for purposes of repairing their two vehicles and making an upgrade to the real property that they are renting but intend to purchase. The Debtors were approved for and have received a \$10,000.00 loan against their retirement account held by the City of Sacramento Management 401A 401(a). *See* dkt. 48, exh. B. An unsigned and undated Loan Disclosure Statement and Loan Agreement and Loan Repayment Schedule are filed as exhibits. Dkt. 48.

From the Declaration of William Roberts and Roxanne Roberts, it appears that the Debtors have already used the funds toward the repair of a 2001 Mercedes E-320 and 2004 Chevrolet Silverado 1500 LS, and the addition of a pergola to shade their patio and living room. Debtors admit that "[w]ithout realizing that [c]ourt approval was required, we prematurely obtained a loan against our retirement in the principal amount of \$10,000." Dkt. 47. Debtors state that they can afford to cover the loan payments since their monthly income has increased and that they are current under the terms of their Chapter 13 plan.

Discussion

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

Debtors do not address the reasonableness of incurring debt to build a pergola on a home that they are renting. Debtors state generally that the pergola was built in an attempt to cut down on cooling and electricity costs in their home. The court is not convinced. The Debtors do not provide any evidence that the pergola was necessary or that their utility bills even decreased after building the pergola. In fact, amended Schedule J filed November 30, 2017, shows that their utilities are unchanged from September 10, 2015, when the last amended Schedule J was filed, and even November 18, 2014, when the original petition was filed.

Most troubling, however, is the fact that Debtors obtained the post-petition \$10,000.00 loan against their retirement account without court approval and in direct violation of the confirmed plan. The Debtors were not authorized to incur such a debt, and electing to do so calls into question whether confirmation of the plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm

the plan were truthful, and if the Debtors filed and are prosecuting this case and plan in good faith.

The Debtors have failed to provide sufficient evidence and explanation for the court to grant the extraordinary relief of retroactively authorizing the post-petition \$10,000.00 loan. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

8. [17-27526](#)-B-13 HIAWATHA HUSBAND
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-29-17 [[19](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$310.00 for the filing of a bankruptcy petition on November 15, 2017. The court's docket reflects that the default was cured on December 4, 2017.

The court will enter an appropriate minute order.

9. [17-27127](#)-B-13 SHERWIN BRAMLETT
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-13-17 [[12](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$310.00 for the filing of a bankruptcy petition on October 30, 2017. The court's docket reflects that the default was cured on November 13, 2017.

The court will enter an appropriate minute order.

10. [14-28728](#)-B-13 ELENA CASTRO
[ASW](#)-1 Eric J. Gravel

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-20-17 [[79](#)]

U.S. BANK, N.A. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion for relief from stay.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2007-OA4 ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 691 Buck Avenue, Vacaville, California (the "Property"). Movant has provided the Declaration of C. Lacey Blanton to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Blanton Declaration states that there are 2 post-petition defaults, with a total of \$9,334.16 in post-petition payments past due.

Opposition was filed by the Chapter 13 Trustee asserting that the motion erroneously states that the Debtor failed to make post-petition payments as of August 21, 2017. According to the Trustee, the Debtor is current with plan payments and the Trustee has made all post-petition installments to Movant, including an installment on November 30, 2017.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause does not exist for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Exhibits filed by the Trustee reflect that the Debtor has been making plan payments and that checks were issued by the Trustee to Movant on August 31, 2017, September 29, 2017, and October 31, 2017.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

11. [17-26134](#)-B-13 GIANNA CARTER
[JPJ](#)-1 Mark Shmorgon

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
10-25-17 [[29](#)]

Tentative Ruling: The 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 overrule the objection and confirm the plan.

This matter was continued from November 14, 2017, to be heard after the motion to value collateral of Tucson Federal Credit Union. Feasibility depends on the granting of that motion. Debtor and Tucson Federal Credit Union have stipulated that the 2014 Mazda MAZDA6 iSport Sedan 40 shall be worth \$8,000.00, which was the valuation asserted in the Debtor's motion. Therefore, the Trustee's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed September 14, 2017, is confirmed.

The court will enter an appropriate minute order.

12. [17-27451](#)-B-13 LUEGENE SIMPSON
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-27-17 [[15](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$310.00 for the filing of a bankruptcy petition on November 10, 2017. The court's docket reflects that the default was cured on December 15, 2017. The payment constituted the final installment.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case 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.

The court's decision is to dismiss the case.

First, the Debtor did not appear at the continued meeting of creditors on November 30, 2017, or provide proof of his social security number. The Debtor has 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 the case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,882.00, which represents approximately 1 plan payment. The Debtor has not made any plan payments since the petition was filed on October 2, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Third, 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). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fourth, the Debtor has not provided copies of certain items in connection with his business Herrera's Pest Control including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements from the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtor has not complied with 11 U.S.C. § 521.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (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 dismiss the case.

The Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). Trustee's objection to confirmation of the plan dated February 9, 2017, was sustained. Debtor's motions to confirm plans dated June 13, 2017, and August 17, 2017, were denied. The Debtor has not taken further action to confirm a plan in this case.

Additionally, the Debtor is delinquent in the amount of \$2,772.00, which represents approximately 3 plan payments. By the time this motion is heard, an additional plan payment in the amount of \$942.00 will also be due. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

15. [17-23960](#)-B-13 SHENNEL BEASLEY MOTION TO CONFIRM PLAN
[MJD](#)-2 Matthew J. DeCaminada 11-6-17 [[45](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 6, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

16. [17-26760](#)-B-13 INGRID EBELING MOTION TO DISMISS CASE
[JPJ](#)-1 Kristy A. Hernandez 11-30-17 [[22](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The court will enter an appropriate minute order.

17. [17-26764](#)-B-13 CAROLYN JANE HEUSTESS ORDER TO SHOW CAUSE - FAILURE
Thru #18 Pro Se TO PAY FEES
11-16-17 [[17](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due November 13, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

18. [17-26764](#)-B-13 CAROLYN JANE HEUSTESS MOTION TO DISMISS CASE
[JPJ](#)-1 Pro Se 12-5-17 [[20](#)]

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The case having been dismissed at Item #17, the motion to dismiss case is dismissed as moot.

The court will enter an appropriate minute order.

19. [17-25366](#)-B-13 RAYMOND CORREA
Taras Kurta

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-17-17 [[46](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on November 13, 2017. While the delinquent installment was paid on November 20, 2017, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

20. [15-29573](#)-B-13 SAUNDRA BATTAGLIA CONTINUED MOTION TO DISMISS
[17-2091](#) BMV-2 AMENDED ADVERSARY PROCEEDING
BATTAGLIA V. THE BANK OF NEW 10-30-17 [[40](#)]
YORK MELLON ET AL
Thru #21
And #27
Tentative Ruling: The court issues no tentative ruling. The court will entertain oral argument.

21. [15-29573](#)-B-13 SAUNDRA BATTAGLIA MOTION TO DISMISS ADVERSARY
[17-2091](#) SW-1 PROCEEDING
BATTAGLIA V. THE BANK OF NEW 11-17-17 [[47](#)]
YORK MELLON ET AL
Final Ruling: No appearance at the December 19, 2017, hearing is required. The motion is deemed moot by a stipulated dismissal.

The court will enter an appropriate minute order.

22. [17-25982](#)-B-13 TERRIE KENT
[JPJ](#)-1 David P. Ritzinger

MOTION TO DISMISS CASE
11-30-17 [[22](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case 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.

The court's decision is to dismiss the case.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$6,030.00, which represents approximately 2 plan payments. The Debtor has not made any plan payments since the petition was filed on September 8, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the December 19, 2017, hearing is required.

The Motion to Value Secured Portion of Claim of Wells Fargo Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties 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 without prejudice the motion to value collateral of Wells Fargo Bank, N.A.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Ford Mustang ("Vehicle"). The Debtor seeks to value the Vehicle at a fair market value of \$2,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

Discussion

The court finds issue with the Debtor's valuation. The motion states that the \$2,500.00 valuation is a "fair-market value of the asset." See dkt. 18. The standard must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a)].

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "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." See 11 U.S.C. § 506(a)(2).

The Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) 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 November 3, 2017, due to delinquency in plan payments (case no. 16-24437, dks. 82, 84). 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 states that this case was filed in order to cure pre-petition mortgage arrears on his primary residence. Debtor contends that his circumstances have changed because he now has a higher net income from his employment as a technician and rental income of a room to his sister. Debtor's Schedule I and Form 122C reflect that he is earning enough money to cover all necessary expenses and the proposed monthly plan payment.

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.

25. [17-20798](#)-B-13 DONNA EDWARDS
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-30-17 [[29](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$31.00 for the filing of an amended verification and master address list on November 10, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

26. [17-25899](#)-B-13 CARLOS/ROBIN ROBLES
[CUBE](#)-5 Candace Y. Brooks

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
5
11-16-17 [[78](#)]

Tentative Ruling: Debtors' Objection to Claim Number 5 of Wells Fargo Bank, N.A. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to continue the matter to February 6, 2017, to allow recently substituted counsel for Wells Fargo Bank, N.A. to review the case and request updated payment history and detailed escrow analysis from Wells Fargo.

The court will enter an appropriate minute order.

27. [15-29573](#)-B-13 SAUNDRA BATTAGLIA
[17-2091](#)
BATTAGLIA V. THE BANK OF NEW
YORK MELLON ET AL
See Also #21

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-29-17 [[34](#)]

Tentative Ruling: The court issues no tentative ruling. The matter will be determined after the hearing on the motion to dismiss adversary proceeding.

28. [17-26694](#)-B-13 TAMARA GEREN
[JPJ](#)-1 Peter L. Cianchetta
See Also #23

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
11-21-17 [[23](#)]

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, feasibility depends on the granting of a motion to value collateral for Wells Fargo Bank, N.A. That motion to value was denied without prejudice at Item #23.

Second, the Debtor's stepped plan payments in the amount of \$1,300.00 (months 1-2), \$1,600.00 (months 3-6), and \$1,800.00 (months 7-12) do not equal the aggregate of the Trustee's fees and monthly post petition contract installments due on Class 1 claims. The aggregate of these monthly amounts plus the Trustee's fee is \$1,814.16 (months 1-2), \$1,842.03 (months 3-6), and \$1,860.61 (months 7-12). The plan does not comply with Section 4.02 of the mandatory form plan.

The Trustee's objection related to payment of attorney's fees has been resolved. The Debtor filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys on November 28, 2017.

For the two reasons stated above, the plan filed October 24, 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.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on April 20, 2017, after Debtor filed an ex parte motion to dismiss case (case no. 15-26854, dkt. 115). The Debtor's second bankruptcy case was dismissed on September 7, 2017, after Debtor failed to cure delinquency in plan payments (case no. 17-24007, dkt. 56).

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

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

A review of the court's docket shows that the most recent case was dismissed due to Debtor's delinquency in plan payments that could not be cured because his wife suffered a stroke and Debtor could not manage his affairs in a timely fashion. See case no. 17-24007, dkts. 49, 56. In the present case, Debtor references the family emergency that occurred in the prior case and also states that he was not aware that payment went into effect immediately and thought it went into effect after plan confirmation.

The Debtor asserts that his present case differs from his two prior bankruptcy cases because he has hired new counsel who has explained to the Debtor his responsibilities. Debtor states that he is confident that he can fulfill his duties as a debtor in Chapter 13. Debtor seeks imposition of the automatic stay to salvage his real property that is under threat of foreclosure.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have changed substantially, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

The court will enter an appropriate minute order.

SHIRLEY SHAW VS.

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

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

Shirley Shaw ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 581 Blarney Circle, Vacaville, California (the "Property"). Movant has provided the Declaration of Matthew A. Stevens to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Stevens Declaration states that there are 2 post-petition defaults, with a total of \$6,120.00 in post-petition payments past due. The Declaration states that Movant is the legal owner of the property. Exh. 1, Dkt. 21. Movant seeks to proceed with the unlawful detainer action filed in state court on October 13, 2017.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano on October 31, 2017, with a Notice to Quit served on October 6, 2017. Exhs. 1, 2, Dkt. 21.

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.