UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 24, 2017 at 1:00 p.m.

1.	16-28001-B-13 JPJ-1	GUSTABO/PATRICIA ALVAREZ Thomas O. Gillis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 12-30-16 [15]

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

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

First, although both Debtors appeared at the first meeting of creditors on December 29, 2016, their attorney failed to appear and the meeting of creditors was continued to January 19, 2017. The Debtors and their attorney appeared at the continued meeting of creditors and it was concluded as to the Debtor and Joint Debtor.

Second, the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys states that the Debtors' attorney agrees to appear at the meeting of creditors with the debtors. The Debtors' attorney failed to appear at the meeting of creditors set for December 29, 2016. However, the Debtors' attorney did appear at the continued meeting of creditors held on January 19, 2017. The Debtors' attorney states in his response that he seeks to elect to take the "no look" fee regardless of the complexity of the case. This shall be provided in the order confirming.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed December 2, 2016, is confirmed.

The court will enter an appropriate minute order.

2. 13-31003-B-13 PAO/MEE LEE
MOH-2 Michael O'Dowd Hays

MOTION TO AVOID LIEN OF CACH, LLC
12-20-16 [42]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

The Motion to Avoid Judicial Lien 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of CACH, LLC ("Creditor") against the Debtors' property commonly known as 1128 Roy Drive, Oroville, California ("Property").

A judgment was entered against Debtor Pao Lee in favor of Creditor in the amount of $5,758.40. An abstract of judgment was recorded with Butte County on April 9, 2013, which encumbers the Property. All other liens recorded against the Property total $151,281.25.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $115,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000.00 on Schedule C. *See* dkt. 1.

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

The court will enter an appropriate minute order.

3.	12-39308-B-13 SDB-4	RANDY/TONI-MARIE CARLSON W. Scott de Bie	MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF DE BIE AND CROZIER, LLP FOR SCOTT DE BIE, DEBTORS' ATTORNEY(S) 12-16-16 [72]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

W. Scott de Bie ("Applicant") has served as attorney for the Debtors since November 7, 2016, after substituting into this case from attorney John Tosney, who is deceased. The Debtors had opted out of the Guidelines. Dkt. 1, p. 4. The court had authorized payment of fees and costs to Mr. Tosney totaling $6,000.00, of which $800.00 was paid prior to the filing of the petition. Dkt. 40. Applicant asserts the Debtors were without an attorney for many years and had contacted Applicant to represent them since their financial circumstances had changed and they needed to seek court approval for the sale of their business and a modification of their confirmed plan. Applicant has received no monies from the Debtors and now seeks compensation in the amount of $1,897.50 in fees and $100.24 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 76.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$1,897.50
Additional Costs and Expenses	$ 100.24

The court will enter an appropriate minute order.

4. 16-27513-B-13 HUMBERTO DIAZ — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Pro Se — 12-30-16 [18]

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

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

First, the Debtor 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).

Second, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtor did not appear at the meeting of creditors set for December 29, 2016, as required pursuant to 11 U.S.C. § 343.

Fourth, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the 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 $186,500.00. The total amount that will be paid to unsecured creditors is $0.00.

Fifth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $175.00, which represents approximately 1 plan payment. 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).

Sixth, 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).

Seventh, the Debtor lacks the ability to make plan payments as proposed because his income listed in Schedules I and J as $95.000 is less than the proposed monthly payment of $175.00. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Eighth, the Debtor has failed to disclose any of his four previous cases in the petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Ninth, the plan does not specify a monthly dividend for the pre-petition arrears to Bank of America in Class 1, and Section 2.15 was not completed.

Tenth, the Schedules and Statement of Financial Affairs are incomplete. No debts were listed in Schedules D and E/F. Only questions 1, 2, 3, and 5 of the Statement of Financial Affairs were completed.

Twelfth, the plan payment in the amount of $175.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $246.58. The plan does not comply with Section 4.02 of the mandatory

form plan.

The plan filed November 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

5. 16-25614-B-13 BEVERLY BAKER HARRIS MOTION TO CONFIRM PLAN
MJD-1 Scott J. Sagaria 12-7-16 [57]

Tentative Ruling: Debtor's Motion to Confirm Second 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 having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee objects to confirmation on the ground that Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay a balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

The Debtor has filed a response acknowledging that the plan erroneously lists $0.00 in Section 2.07 of the plan. The Debtor proposes to add the following language in the order confirming: "The monthly dividend on administrative expenses being paid pursuant to Section 2.07 shall be amended from '$0.00' to '$1,000.00'."

Assuming this does not alter or otherwise adversely affect distributions, 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.

6.	16-20018-B-13 JPJ-3	JOJIE GOOSELAW Peter G. Macaluso	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 12-20-16 [84]

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

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

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted, or in the alternative dismissed, on the ground that the Debtor has caused unreasonable delay that is prejudicial to creditors by failing to take further action to confirm a plan after a motion to confirm amended plan was heard and denied on October 18, 2016.

The Debtor has filed a response that it will file, set for hearing, and serve an amended plan and be current on plan payments before the hearing on this matter. An amended plan was filed on January 10, 2017.

Discussion

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

The Bankruptcy Code Provides:

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

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

Provided that the Debtor is current on plan payments, cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed an amended plan and prosecuted this case. The motion will be denied without prejudice and the case will not be converted or dismissed.

The court will enter an appropriate minute order.

7. 16-25118-B-13 RICHARD CHASTAIN MOTION TO CONFIRM PLAN
DPR-1 David P. Ritzinger 12-13-16 [37]

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.

The plan will take approximately 154 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The plan understates the priority claim of the Internal Revenue Service at $3,000.00. The proof of claim shows a priority claim of $34,380.33. Although the Debtor's declaration states that he believes he owes $0.00 to the IRS for the tax year 2012 and that the IRS has not processed his late income tax return, a proof of claim is allowed unless a party in interest objects pursuant to 11 U.S.C. § 502(a). To date, no party in interest has objected to the proof of claim filed by the IRS.

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.

8. 17-20020-B-13 BRENDA PEARL MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 1-5-17 [8]

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 October 14, 2016, after Debtor failed to receive a credit counseling briefing before filing her case, attend the meeting of creditors, propose a confirmable plan, provide the Trustee with her pay advices for the 60-day period prior to the filing of bankruptcy, and provide the Trustee with copies of her last filed tax return (case no. 16-25169, dkt. 50). 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).

Debtor asserts that her bankruptcy cases were filed in order to cure pre-petition arrears owed on her primary residence and to retain her vehicle. The Debtor states in her declaration that she was unable to attend the meeting of creditors in her prior bankruptcy due to an emergency related to her father, who is now deceased. The Debtor believes that she will succeed in this case because she has retained legal counsel to represent her whereas in the previous case she had filed pro se.

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.

9.	16-22930-B-13 JPJ-1	RICHARD/NORMA ALLEN Michael O'Dowd Hays	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 10 12-5-16 [24]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Bank of America, N.A. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $5,787.21. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was September 7, 2016. Dkt. 14. The Creditor's Proof of Claim was filed November 3, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Banker (In re Banker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

The court will enter an appropriate minute order.

10. 13-24835-B-13 SUZANNE ERICKSON
PGM-6 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
12-22-16 [75]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since October 20, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 14. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $1,200.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 79.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor's case would be dismissed for failure to make payments and that she would have to file a motion to reconsider dismissal, motion to approve trial loan modification, and two motions to modify. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$1,200.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

11. 16-27041-B-13 CHAD/STEPHANIE HUNSAKER MOTION TO CONFIRM PLAN
MJD-1 Scott J. Sagaria 12-12-16 [19]
Thru #12

Tentative Ruling: The Debtors' 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, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,388.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a cure of post-petition arrearage owed to Lakeview Loan Services/Cenlar FSB, including a specific post-petition arrearage amount, interest rate, and monthly dividend.

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.

12. 16-27041-B-13 CHAD/STEPHANIE HUNSAKER COUNTER MOTION TO DISMISS CASE
MJD-1 Scott J. Sagaria 1-9-17 [30]

Tentative Ruling: The motion is conditionally denied.

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

The court will enter an appropriate minute order.

13. 16-28241-B-13 EARL/JENNIFER MCFALL — MOTION TO AVOID LIEN OF SANDRA NELSON
LRR-1 Len ReidReynoso
12-21-16 [8]

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

The court's decision is to decide this matter at the scheduled hearing.

14. 16-28048-B-13 STANLEY CHARLES
AG-1 John G. Downing

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-19-16 [9]

U.S. BANK TRUST, N.A. VS.

Final Ruling: No appearance at the January 24, 2017, hearing is required.

The Motion by U.S. Bank Trust, N.A., as Trustee for Vericrest Opportunity Loan Trust 2011-NPL2, for In Rem Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

U.S. Bank Trust, N.A. as Trustee for Vericrest Opportunity Loan Trust 2011-NPL2 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 15031 Glenshire Drive, Truckee, California (the "Property"). Movant has provided the Declaration of Josh Cantu to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Cantu Declaration states that the Debtor is in pre-petition arrears in the amount of $268,868.53 as of December 6, 2016. This represents 86 pre-petition defaults. The total amount due, owing and unpaid on Movant's loan due to acceleration is $733,249.56. According to a Broker's Opinion of Value obtained by Movant, the Property's estimated value is $535,000.00. *See* dkt. 11, exhs. G, H. The Property's valuation according to Debtor's Schedules A and D is $490,000.00. Dkt. 16. With either valuation, the loan balance exceeds the current value of the property.

Discussion

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property.

Finally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud*

creditors that involved either-

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor has filed bankruptcy a total of four times in an effort to thwart Movant from foreclosing on the Property. In each of the three prior bankruptcies, Debtor's case was dismissed for failure to file necessary schedules and other related documents. Not only this, but days after Debtor's second bankruptcy was dismissed, the Debtor filed a civil complaint against his creditors, the foreclosure trustee, and the loan servicer primarily to prevent the foreclosure sale. As a result of the civil suit, the sale was postponed for over four years until the civil suit was resolved. The Debtor's creditors ultimately obtained a judgment against Debtor in March 2016. Three days before the foreclosure sale scheduled for November 28, 2016, the Debtor filed his third bankruptcy case on November 23, 2016. When that case was dismissed for failure to timely file necessary documents, the Debtor filed this fourth bankruptcy. The court finds that the Debtor's multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

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

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

15. 16-26754-B-13 MICHAEL/SASHA KELLY — MOTION TO CONFIRM PLAN
DNP-2 Debora N. Paul — 12-8-16 [33]

Final Ruling: No appearance at the January 24, 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 December 8, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

16. 16-27856-B-13 JPJ-1 BENJAMIN/JULIA ARREGUY Justin K. Kuney — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 12-30-16 [14]

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

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

First, the Debtor did not appear at the meeting of creditors set for December 29, 2016, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to January 19, 2017, which the Debtors attended. The meeting was concluded as to the Debtor and Joint Debtor.

Second, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtors' $4,000.00 net income from rental property and/or operation of a business.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The value of the promissory note from Sierra Soapstone on Schedule B appears to be understated at $62,772.00 as the outstanding principal balance is $125,544.00. The total amount of non-exempt property in the estate is $100,926.00. The total amount that will be paid to unsecured creditors is only $59,240.70.

Fourth, the Debtors' present income is from the operation of a business according to the Statement of Financial Affairs. Question 27 of the Statement of Financial affairs does not provide information regarding the present business. Additionally, the petition does not disclose the names of the Debtors' former and present business at Question 4. The Debtors have not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Fifth, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,730.00, which represents approximately 1 plan payment. The Debtors have not made any plan payments to the Trustee since the filing of the petition on November 29, 2016. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, the Debtors do not appear to be able to make the plan payments proposed because their monthly net income is -$357,181.00. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, feasibility depends on the granting of a motion to value collateral for Golden One Credit Union in Class 2B, which holds as its collateral a 2014 Ford F150 FX4. The Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Eight, feasibility depends on the granting of a motion to value collateral for JP Morgan Chase Bank, the holder of the second deed of trust on the Debtors' primary residence. The Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Ninth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows the monthly

expense for the first mortgage owed to Bank of America is $4,307.78. According to Class 4 of the plan, the monthly payment is $3,625.00. The Trustee calculates that the Debtors monthly disposable income is $1,400.08 and the Debtors must pay no less than $84,004.80 to unsecured non-priority creditors. The plan will pay only $59,240.70.

The plan filed November 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

17.	16-27061-B-13 SNM-2	DANIEL CEJA Stephen N. Murphy	OBJECTION TO CLAIM OF DEBRA WALDROP, CLAIM NUMBER 1 12-8-16 [38]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

The Debtor having filed a Notice of Withdrawal of Objection to Claim 1 Filed by Debra Waldrop, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

18.	16-27763-B-7 JPJ-1	WILSON/BRANDI WONG Kristy A. Hernandez	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-30-16 [22]

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

The court's decision is to overrule the objection and confirm the plan.

Feasibility depends on the granting of a motion to avoid lien held by CACH, LLC. That motion was heard and granted on January 17, 2017.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed November 22, 2016, is confirmed.

The court will enter an appropriate minute order.

19. 16-26567-B-13 DANIEL/PATRICIA FUSCO
JPJ-1 Ashley R. Amerio

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-17-16 [14]

Tentative Ruling: The Objection to Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 sustain the objection and the exemption is disallowed in its entirety.

This matter was continued from January 3, 2017, for the Debtors to provide supplemental evidence of payroll stubs, deposit receipts, and bank statements, to show where disputed account funds came from and that they fall within the scope of § 704.070. The Debtors filed their supplemental response on January 10, 2017.

The Trustee had objected to Debtors' claimed interest in a Banner Bank checking account, Banner Bank savings account, Golden One Credit Union checking account, and Golden One Credit Union savings account in their full amounts. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtors may not claim the entire asset value as exempt as only 75% of the paid earnings that can be traced into deposit accounts are exempt.

In Debtors' supplemental response filed January 10, 2017, Debtors' counsel states that he has determined that the source of funds in the accounts on the date of filing were not from Debtors' pay checks deposited within the previous 30 days and should not have been exempted. Instead, the funds in the Banner Bank checking account at the date of filing were transferred from the Debtors' money market account with Waddell Reed. Additionally, the funds in the Debtors' Banner Bank savings account, Golden One Credit Union checking account, and Golden One Union savings account were deposited more than 30 days before the filing and therefore not exempt either.

The Debtors concede that the Trustee's objection should be sustained on grounds that the funds in the accounts were not from paid earnings received within 30 days of filing. The Debtors further state that sustaining the Trustee's objection will have no impact on their Chapter 13 plan since it proposes to pay 100% of unsecured creditors.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The court will enter an appropriate minute order.

20. 16-25470-B-13 MICHAEL HANKS MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 12-13-16 [34]

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 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, Mortgage Stearns Lending, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $28,191.76 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.

Second, due to Mortgage Stearns Lending, LLC's proof of claim that lists pre-petition arrears greater than that provided for in Debtor's plan, the proposed plan will exceed the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and will results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the plan does not specify a cure of the post-petition arrearage owed to Stearns Lending, LLC/Loancare, LLC in Class 1 including a specific post-petition arrearage amount, interest rate and monthly divided. The Trustee cannot comply with Section 2.08(b) of the plan.

Fourth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,560.00, 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.

21. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2188
FRESHKO PRODUCE SERVICES, INC.
V. MAYER
Thru #22

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
9-23-15 [1]

CONTINUED TO 2/07/17 at 1:00 p.m. DECISION TO BE READ ON RECORD.

Final Ruling: No appearance at the January 24, 2017, hearing is required. The court will enter an appropriate minute order.

22. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2188 RJR-2
FRESHKO PRODUCE SERVICES, INC.
V. MAYER

CONTINUED MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION OF CLAIMS AGAINST DEFENDANT
11-30-16 [47]

CONTINUED TO 2/07/17 at 1:00 p.m. DECISION TO BE READ ON RECORD.

Final Ruling: No appearance at the January 24, 2017, hearing is required. The court will enter an appropriate minute order.

23. 16-22885-B-13 DEAN/RACHEL MOORE — MOTION TO MODIFY PLAN
TLA-1 Thomas L. Amberg — 12-20-16 [24]

Final Ruling: No appearance at the January 24, 2017, hearing is required.

The Motion to Confirm 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 December 20, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

24. 16-27285-B-13 JORGE GARCIA AND MARIBEL ALEMAN
TOG-2 Thomas O. Gillis

MOTION TO CONFIRM PLAN
12-9-16 [20]

CONTINUED TO 2/14/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF KAMALJIT TAKHAR.

Final Ruling: No appearance at the January 24, 2017, hearing is required. The court will enter an appropriate minute order.

25. 16-22891-B-13 DANIEL/NANCY BALAGUY MOTION TO CONFIRM PLAN
DAO-4 Dale A. Orthner 12-12-16 [86]

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

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

The Debtors are delinquent to the Chapter 13 Trustee in the amount of $5,462.00, which represents the plan payment that was due on December 25, 2016. The Debtors do not appear to be able to make plan payments proposed and have 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.

26. 13-27992-B-13 SUSAN MAGLIANO-BASSOFF — MOTION TO APPROVE LOAN MODIFICATION
TJW-1 Pro Se — 1-5-17 [63]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Order to Approve Modification of Mortgage Loan on Real Property at 3500 Pleasants Trail, Vacaville, CA (Lender Wells Fargo Bank N.A.) 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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $3,643.75 a month to $2,012.52 a month. This decrease in payment does not reflect full amortization on the deferred balance but there will be complete forgiveness of $47,840.30 during the term of the loan provided the Debtor is not in default. The modification will increases the term of the loan to a new 40-year period with a maturity date of 2056. The current unpaid principal is $659,999.99 and the new principal balance will be $668,840.00.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's 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.

27. 16-27793-B-13 CYNTHIA/SANDRA KERR
JPJ-1 Dale A. Orthner
Thru #28

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-30-16 [18]

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

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

First, the plan will take approximately 448 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). This is due to the fact that the Debtors' plan understates the priority claim of the Internal Revenue Service in Class 5 at $1,000.00. The proof of claim filed by the IRS on December 16, 2016, shows a priority debt in the amount of $60,001.93.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $156.00, which represents approximately 1 plan payment. The Debtors have not made any plan payments to the Trustee since the filing of the petition on November 27, 2016. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtors have not filed their income tax return for the tax year 2013 according to the proof of claim filed by the IRS. The plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(9).

Fourth, the Debtors did not submit proof of their social security numbers to the Trustee at the meeting of creditors on December 29, 2016, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to January 19, 2017, for both the Debtors to provide proof of their social security numbers to the Trustee.

The plan filed November 27, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

28. 16-27793-B-13 CYNTHIA/SANDRA KERR
KWS-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
1-4-17 [24]

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

reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Toyota Motor Credit Corporation ("Creditor") is the holder of a claim arising from the purchase of a 2004 Toyota Sequoia as described in a Retail Installment Sale Contract Simple Finance Charge dated March 12, 2009. Creditor has not yet filed a proof of claim but states that it intends to do so and seek a secured claim in the amount of $2,703.91. This amount is supported by the Affidavit of Cheryl Nishimura, an individual who maintains or controls the bank's loan records. The Vehicle appears on Schedule B but does not appear on Schedules D or F of Debtors' petition.

Creditor acknowledges that Debtor Cynthia Alice Kerr received a discharge of the debt owed to Toyota at the completion of her Chapter 7 bankruptcy (case no. 11-47000) and is therefore no longer liable for repayment of the debt that gives rise to the instant objection. However, Creditor asserts that Joint Debtor Sandra Kerr, co-owner of the Vehicle, did not receive a discharge of the debt and remains liable. *See* dkt. 24, exhs. A, B.

The Debtors' plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed November 27, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

29. 16-24195-B-13 JESSICA NADOLSKI MOTION TO CONFIRM PLAN
DE-1 Robert C. Bowman 9-26-16 [32]

Tentative Ruling: The Motion to Confirm 2nd [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 having been filed, the court will address the merits of the motion at the hearing.

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

The plan filed November 29, 2016, does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payments to unsecured creditors.

The amended Calculation of Disposable Income (Form 122C-2) filed on November 29, 2016, shows that the Debtor's monthly disposable income si $822.89 and the Debtor must pay no less than $49,373.40 to unsecured non-priority creditors. The Trustee calculates that the plan will pay only $40,978.98 to unsecured non-priority creditors. Additionally, amended Form 122C-2 adds a deduction at line 17 in the amount of $212.33 of involuntary payroll deductions. There is no evidence that this deduction is involuntary and no explanation for the addition of this deduction. Furthermore, amended Form 122C-2 increased the deduction for optional telephone services at line 23 from $60.00 to $250.00 with no explanation. If these additional deductions are not substantiated, the Debtor's monthly net income is $1,225.22 and the Debtor must pay no less than $73,513.20 to unsecured non-priority creditors.

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.

30. 16-27996-B-13 VICKI NAZAROFF
JPJ-1 Rick Morin

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-30-16 [12]

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

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

The plan will take approximately 102 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). This is due to the fact that the Debtors' plan understates the priority claim of the Internal Revenue Service at $1.00. The proof of claim filed by the IRS on December 19, 2016, shows a priority debt in the amount of $10,497.14.

The plan filed December 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

31. 16-26999-B-13 ANGELINA KUBRAKOV
Pro Se

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 1
12-9-16 [45]

DEBTOR DISMISSED: 01/08/2017

Final Ruling: No appearance at the January 24, 2017, hearing is required. The objection to claim no. 1 is overruled as moot. The case was dismissed on January 8, 2017.

The court will enter an appropriate minute order.

32. 16-27999-B-13 DENNIS REYNOLDS
MJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
12-29-16 [14]

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

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

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $15,635.74 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed December 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.