UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 21, 2017 at 1:00 p.m.

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1. 13-21400-B-13 DEBORAH SHEIDLER — MOTION TO APPROVE LOAN MODIFICATION
PGM-1 Peter G. Macaluso — 1-18-17 [60]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion for Order Approving 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)(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 permit the loan modification requested.

Debtor seek court approval to incur post-petition credit. Bayview Loan Servicing, LLC ("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 $1,977.00 a month to $1,501.60 a month. The modification principal balance of the Note will include all amounts and arrearages that will be past due as of the modification effective date less any amounts paid to the lender but not previously credited on the Debtor's loan. The amount of $39,773.60 of the new principal balance will be deferred and the debtor will make no monthly or interest payments on this amount. This deferred balance may be eligible for forgiveness provided the Debtor does not default on payments. The interest rate of 2.874% began to accrue on the new principal balance as of December 1, 2016. The maturity date will be December 1, 2056. The agreement will not have any direct impact on the estate, Trustee, or other secured creditor in this case.

The motion is supported by the Declaration of Deborah Sheidler. 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.

2. 15-25402-B-13 THEA ELVIN MOTION TO SELL
MET-2 Mary Ellen Terranella 1-30-17 [39]

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

The court's decision is to grant the motion to sell provided that a short sale agreement is finalized at the time of hearing.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to short sell the property described as 35 Willotta Drive, Fairfield, California ("Property").

According to Debtors' motion and declaration, the proposed purchasers of the property Joshua Knoll and Makenzi Knoll have agreed to purchase the Property for $720,000.00. However, the Residential Purchase Agreement and Joint Escrow Instructions attached as an exhibit A indicate a total purchase price of $710,000.00. The first and second mortgages held by Wells Fargo Home Mortgage and Wells Fargo Bank, N.A., respectively, will be paid off through escrow with sale proceeds pursuant to agreement by the lenders to accept less than the full amount due. However, on February 13, 2017, creditors filed conditional non-oppositions in which they state that a short sale agreement has not yet been finalized and that consent to a sale of the Property is conditioned upon final approval of such agreement. The Debtor will receive no proceeds from the short sale of the property. The Debtor requests that the 14-day stay period pursuant to Bankruptcy Rule 6004(g) be waived.

At the time of the hearing the court will announce the proposed sale, determine if a short sale agreement is approved and, if so, request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, and subject to the conditions herein, the court determines that the proposed sale is in the best interest of the Estate.

The court will enter an appropriate minute order.

3. 13-29206-B-13 CURTIS/KATIE LANE — MOTION TO SELL
MWB-1 Mark W. Briden — 1-23-17 [24]

Thru #4

Tentative Ruling: The Motion for Order Authorizing Sale of Property 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). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as a 2006 Dodge Charger ("Property").

The proposed purchaser of the property Scott Ellis has agreed to purchase the Property for $9,000.00. Proceeds from the sale will pay Class 2 creditor Bank of America, which holds a lien in the amount of $2,000.00. The balance from the sale will be paid to the Debtors.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court will enter an appropriate minute order.

4. 13-29206-B-13 CURTIS/KATIE LANE — MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS' ATTORNEY
MWB-2 Mark W. Briden — 1-24-17 [30]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion for Approval of Additional Fees and Costs Payable to 11 USC 503(a) [and] (b) and Declaration Thereon 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 as modified by the court.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Mark Briden ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $2,000.00, which was not the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 19. Applicant now seeks

additional compensation in the amount of $742.50 in fees and $58.74 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 33.

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).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would seek to sell their 2006 Dodge Charger post-petition. Although the court finds that Applicant effectively used appropriate rates of $225.00 per hour for the services provided, the court is not persuaded that it took the Applicant 3.3 hours to prepare the docket number, notice of motion for sale of the property, motion for sale of the property, declaration, exhibits, and proposed order. It is worth noting that the contract to sell the vehicle was hand drafted by the Debtors and was not prepared by the Applicant. As such, the court will reduce the additional fees awarded by half, or 1.65 hours. With that modification, 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	$742.50
Less 1.65 hours at $225.00/hour	$371.25
Additional Costs and Expenses	$ 58.74
Total	**$429.99**

The court will enter an appropriate minute order.

5. 17-20407-B-13 FORREST GARDENS — MOTION TO VALUE COLLATERAL OF
MRL-1 Mikalah R. Liviakis — ADVANTIS CREDIT UNION
Thru #6 — 1-23-17 [9]

Final Ruling: No appearance at the February 21, 2017, is required. The parties entered into a stipulation to continue the hearing on this matter to March 21, 2017 at 1:00 p.m. Dkt. 17. Creditor's responsive pleadings shall be filed on or before March 7, 2017. Any reply by Debtor shall be due on or before March 14, 2017.

The court will enter an appropriate minute order.

6. 17-20407-B-13 FORREST GARDENS — MOTION TO VALUE COLLATERAL OF
MRL-2 Mikalah R. Liviakis — ADVANTIS CREDIT UNION
1-23-17 [13]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion to Value 2010 Acura TSX, Collateral of Advantis Credit Union 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 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 value the secured claim of Advantis Credit Union at $15,000.00.

Debtor's motion to value the secured claim of Advantis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Acura TSX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was used to refinance the original vehicle loan. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $15,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

7. 16-25708-B-13 CONSOLACION VELASCO — MOTION TO CONFIRM PLAN
PLG-3 Stuart M. Price — 1-10-17 [53]

Tentative Ruling: Debtor's 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.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $8,592.64, which represents approximately 4 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).

Second, although no plan has ever been confirmed in this case, the previously filed plans and the plan filed January 10, 2017, provide for treatment of Wells Fargo Bank in Class 1. Due to the failure of the Debtor to make plan payments timely, the Trustee lacked sufficient funds to pay 4 post-petition contract installments to Wells Fargo Bank of the months of September 2016, October 2016, December 2016, and January 2017. The plan provides a cure of only 2 post petition payments. The plan does not specify a cure of all the post-petition arrearage. Section 2.08(b) of the plan cannot be fully complied with.

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.	16-23113-B-13 JPJ-2	CHAD ORCUTT Michael Benavides	OBJECTION TO CLAIM OF MONTE BELLO APARTMENTS / DUSTIN WELLS, ATTORNEY AT LAW, CLAIM NUMBER 15-1 1-6-17 [32]

Final Ruling: No appearance at the January 21, 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. 15 of Monte Bello Apartments / Dustin Wells, Attorney at Law and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Monte Bello Apartments / Dustin Wells, Attorney at Law ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,621.00. 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 28, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 16. 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. Barker (In re Barker)*, 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.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court will enter an appropriate minute order.

9. 16-28414-B-13 ARTHUR/TRISHA WHITTEN — MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC
PGM-1 Peter G. Macaluso — 1-19-17 [19]

Tentative Ruling: The Motion to Value Collateral of Ford Motor Credit Company, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 value.

Debtors' motion to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Ford Flex ("Vehicle") with 93,000 miles. The Debtors seek to value the Vehicle at a replacement value of $12,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Ford Motor Credit Company LLC is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting the value of the Vehicle is $15,500.00. Creditor bases this valuation on NADA Guide using the mileage of 75,000 listed in Debtors' Schedule D. Creditors dispute Debtors' valuation on grounds that it is based on opinion without any evidence of repair estimates associated with the alleged necessary for repairs, and because the Debtors' claimed mileage is substantially higher than that provided in Schedule D without any explanation for its increase in mileage.

Discussion

The value offered by the Creditor, $15,500.00, is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.nadaguides.com.

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

Nor have the Debtors proven to the court's satisfaction the replacement value of the Vehicle. The Debtors have not explained the 18,000 mileage discrepancy as listed in Schedule D against their declaration. Additionally, the Debtors provide no estimate for the cost to fix the needed repairs as listed in their declaration. These factors must be considered in order to determine the cost a retail merchant would charge for the Vehicle.

While neither parties have persuaded the court regarding their position of the value of

the vehicle, the Debtors have the burden of proof. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

10.	12-42115-B-13 LDD-2	IZABELA GIBALEWICZ Linda D. Deos	CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION 12-6-16 [58]

Final Ruling: No appearance at the February 21, 2017, is required. An order approving a stipulation to continue this matter to March 21, 2017, at 1:00 p.m. was filed in February 15, 2017.

11. 16-20018-B-13 JOJIE GOOSELAW
JPJ-3 Peter G. Macaluso
Thru #12

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
12-20-16 [84]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny the motion without prejudice in light of the confirmed amended plan at Item #10.

The court will enter an appropriate minute order.

12. 16-20018-B-13 JOJIE GOOSELAW
PGM-5 Peter G. Macaluso

MOTION TO CONFIRM SECOND AMENDED PLAN
1-10-17 [91]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion to Confirm Debtors' Amended Plan Filed on January 10, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 January 10, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13.	16-22522-B-13 JPJ-1	GERALD/CHRISTINE THOMPSON Mark A. Wolff	OBJECTION TO CLAIM OF SENTRY RECOVERY & COLLECTION, CLAIM NUMBER 12 1-6-17 [37]

Final Ruling: No appearance at the February 21, 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. 12 of Sentry Recovery & Collection and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Sentry Recovery & Collection ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,209.18. 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 August 31, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 19. The Creditor's Proof of Claim was filed September 6, 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. Barker (In re Barker)*, 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.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court will enter an appropriate minute order.

14. 16-27331-B-13 DAVID/DANETTE CARTER MOTION TO CONFIRM PLAN
CLH-1 Cindy Lee Hill 1-9-17 [17]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion to Confirm the 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 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 January 9, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

15. 11-21232-B-13 LESZEK/IWONA FEDYCKI — MOTION TO AVOID LIEN OF BENJAMIN VANOVEREEM, KRISTEN VANOVEREEM AND ANTONIO M. AVELAR DBA SANTA CLARA REALTY
MS-1 Mark Shmorgon — 1-23-17 [117]

Tentative Ruling: The Motion to Avoid Judicial 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 deny the motion without prejudice.

Introduction

Presently before the court is a motion by debtors Leszek Marek Fedycki & Iwona Jadwiga Fedycki ("Debtors") to avoid a judicial lien under 11 U.S.C. § 522(f)(1). Section 522(f)(1) allows a debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is- a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]" 11 U.S.C. § 522(f)(1)(A).

Background

The Debtors received a chapter 13 discharge on April 18, 2016, and this chapter 13 case was closed on May 2, 2016.

The case was reopened and the Debtors filed the present § 522(f)(1) lien avoidance motion on January 23, 2017. Creditors Benjamin Vanovereem, Kristen Vanovereem, and Antonio M. Avelar dba Santa Clara Realty ("Creditors") opposed the motion on February 7, 2017. Debtors replied to Creditors' opposition on February 8, 2017. Creditors filed a second opposition as an evidentiary objection on February 14, 2017. Debtors filed a supplemental response on February 15, 2017.

The court has reviewed and considered each of the foregoing documents, and all of their corresponding exhibits and related declarations. The court has also reviewed and takes judicial notice of the entire docket in this chapter 13 case. *See* Fed. R. Evid. 201; *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006).

Relevant facts are discussed in the analysis below. Based on the disposition below, the court need not determine the valuation issue over which the parties spend much time squabbling.[1]

[1]The parties correctly agree that the petition date is the operative date to value exempt property for purposes of a § 522(f)(1) lien avoidance motion. *In re Martinez*, 469 B.R. 74, 83 (Bankr. D.N.M. 2012); *Mbaba v. Clark Fergus & Assoc. (In re Mbaba)*, 2006 WL 6810948, *5 (9th Cir. BAP 2006) (citation omitted). That said, Debtors' and Creditors' petition date values are not persuasive. Debtors' value is based on a valuation of 2633 California Ave., Carmichael, California [Dkts. 81, 136], which, as discussed below, the Debtors have not shown is, or is applicable to, 2639 California Ave., Carmichael, California, which is where the Debtors state Creditors' judicial lien is recorded or, if so, how. Debtors also offer information from zillow.com which is inherently unreliable. *In re Darosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010); *see also DeBilio v. Golden (In re DeBilio)*, 2014 WL 4476585, *7 (9th Cir. BAP 2014) (citation omitted); *In re Cocreham*, 2013 WL 4510694, *3 (Bankr. E.D. Cal. 2013) (citations omitted). Creditors' valuation

Discussion

Debtors move to avoid a $23,436.56 judicial lien created by an abstract of judgment that Creditors recorded with the Sacramento County Recorder on or about December 9, 2010. The abstract of judgment lists 2639 California as the Debtors' address. [Dkt. 119, Ex. D]. Debtors also assert in the motion that the judicial lien created by Creditor's recorded abstract of judgment impairs a C.C.P. § 703.140(b)(1) homestead exemption they claimed in their residence at 2639 California. [Dkts. 117 at 2:1, ¶ 3; 120 at ¶ 2; 128 at ¶ 2].

The Debtors bear the burden of proving every element of § 522(f). *See In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009); *see also Reynolds v. Swedelius (In re Reynolds)*, 2006 WL 6811035 at *8 (9th Cir. BAP 2006). The Debtors have not satisfied their burden.

The Ninth Circuit bankruptcy appellate panel has summarized and restated the statutory requirements to avoid a judicial lien under § 522(f)(1) as follows:

> There are four basic elements of an avoidable lien under § 522(f)(1)(A): First there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). ***Second, the property must be listed on the debtor's schedules and claimed exempt. Third, the lien must impair that exemption.*** Fourth, the lien must be ... a judicial lien.

Green v. Hapo Community Credit Union (In re Green), 2013 WL 4055846, *4 (9th Cir. BAP 2013) (internal citations omitted, emphasis added) (citing *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390–91 (9th Cir. BAP 2003)). The Debtors have failed to establish the second and third elements.

The real property located at 2639 California where the motion states Creditors' judicial lien is recorded is not listed - and therefore is not claimed as exempt - on amended Schedule C. Amended Schedule C lists and claims an exemption in 2633 California and not 2639 California.[2] [Dkt. 119, Ex. B]. Thus, according to the Debtors' own motion, Creditors' judicial lien does not impair an interest in property that the Debtors list and claim as exempt on amended Schedule C. In fact, all the motion establishes is that Creditors' judicial lien impairs the Debtors' interest in non-exempt property which means there is nothing for the Debtors to avoid under § 522(f)(1).[3] Therefore, for the foregoing reasons the motion will be denied

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is equally unreliable and lacking in probative value. Creditors base their petition date value on a 2008 sales price and appraisal and 2016-2017 comparable sales. Neither are indicative of a 2011 petition date value and, thus, neither trigger the balancing of "expert" versus "lay" opinion discussed in *In re Meeks*, 349 B.R. 19 (Bankr. E.D. Cal. 2006), even if the court were to follow that decision.

[2]In this regard, both the motion and the Debtors' declaration filed in support of the motion are inaccurate and misleading. The motion states that "[a]s shown in the amended Schedule C of the filed case, the Debtors have claimed an exemption in the amount of $1.00 on the Lien Property." [Dkt. 117 at ¶ 5]. The motion defines the "Lien Property" as 2639 California. [*Id.* at ¶ 3]. Debtors' declaration similarly states: "We have claimed an exemption on the Lien Property in the amount of $1.00." [Dkt. 120 at ¶ 5]. The declaration also defines the "Lien Property" as 2639 California. [*Id.* at ¶ 2]. And as noted above, the exemption is claimed in 2633 California and not 2639 California.

[3]On the record before it, the court cannot determine whether 2639 California and 2633 California are the same or separate properties. There is some indication they are not the same. The declaration of Antonio M. Avelar filed with Creditors' opposition states that the Debtors' properties are currently used as four units but consist of duplexe**s**. [Dkt. 125 at ¶ 7]. That suggests there are two duplexes which, in turn, suggests that each duplex may have a different address, *i.e.*, 2639 California and 2633 California. Thus, to the extent the former is where the judicial lien is recorded and the

without prejudice.

The court will enter an appropriate minute order.

latter is claimed as exempt the judicial lien impairs no exemption. Perhaps an even bigger problem for the Debtors is that if these are separate properties consisting of two duplexes with different addresses the Debtors have not explained how, for purposes of this motion, they can now claim a C.C.P. § 703.140(b)(1) exemption on 2639 California when in the schedules and numerous declarations signed under penalty of perjury and submitted with § 522(f)(1) lien avoidance motions filed earlier in the case the Debtors stated they resided at 2633 California and not 2639 California. [Dkt. 119, Exs. A, B, C (schedules); Dkts. 37 at ¶ 2 (declaration) ("We currently own and reside at 2633 California Avenue[.]"); 46 at ¶ 2 (accord); 75 at ¶ 2 (accord)]. In any case, because the motion is facially defective it fails to state any basis for relief under § 522(f)(1) as stated above.

16. 16-26242-B-13 STEVEN/LINDA MAYNERICH MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 1-4-17 [52]

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed on January 4, 2017, 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 Debtors' projected disposable income is not being applied to make payments to unsecured creditors and therefore does not comply with 11 U.S.C. § 1325(b)(1)(B). Form 122C-2, Line #43, in the amount of $5,935.86, appears to be improper and duplicative since the Debtors have listed this expense under Line #46. In addition, Joint Debtor stated at the meeting of creditors that she is expected to retire in April 2017 and that she has funds in her retirement account. Therefore, with the supplementation of Joint Debtor's retirement income to her social security income, it is possible that her net income amount will remain the same rather than less. Therefore, at this time there is no change of circumstances that is "known or virtually certain" to be a valid *Lanning* argument and would not be an allowable deduction at either Line #43 or #46. The Trustee raised this argument in its Supplemental Objection to Trustee's Objection of Chapter 13 Plan and Conditional Motion to Dismiss (dkt. 35), which was heard and sustained on December 13, 2016. The Debtors have not properly addressed this concern and account for any of Joint Debtor's supplemental retirement income. The Debtors' conclusory statement in the reply filed on February 13, 2017, that she "estimates" retirement income to be $3,468.85 is unconvincing and not at all persuasive on this issue especially since there is no explanation of any adjustment for expenses resulting from the Debtors' self-described $5,953.86 decrease in monthly income.

Without the expenses for voluntary retirement contributions and the change in income the Debtors must pay no less than $373,532.40 to their unsecured creditors. The plan does not propose to pay anything to general unsecured creditors, which are scheduled in the amount of $99,619.87. The Debtors' plan does not appear to be filed in good faith since they are not making their best effort to repay their creditors pursuant to 11 U.S.C. § 1325(a)(3). The Debtors propose a 0% plan while attempting to pay themselves approximately $4,685.86 per month in retirement holdings. This is approximately 30% of Debtors' gross income. The Debtors have listed this deduction as mandatory retirement but both Debtors list only 401k retirement accounts under Line #21 of Schedule A/B, which means that these retirement withholdings are voluntary and are impermissible deduction from Debtors' budget.

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.

17. 16-27849-B-13 JOSE ORTIZ-MORALES
JPJ-1 Steele Lanphier

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-18-17 [24]

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 determine this matter at the scheduled hearing.

This matter was continued from February 7, 2017, to allow the Debtor to address the first and second items below. The third item has apparently been resolved as the Debtor is current.

First, the Debtor has not complied with 11 U.S.C. § 521(a)(3) since the Debtor has not amended #4 of the Statement of Financial Affairs as requested by the Trustee. The Debtor has not listed the correct year-to-date income amounts for himself as well as his non-filing spouse.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(1) and (3) since the Debtor's projected monthly net income is not being applied to make payments to unsecured creditors. Debtor's monthly net income under Line #23c of Schedule J is $174.00. However, Debtor's plan payment is only $100.00 per month and Debtor proposes a 0% dividend to general unsecured creditors.

Third, the Debtor is delinquent to the Trustee in the amount of $100.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $100.00 will also be due. The Debtor does not appear to be able to make plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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. However, if the first and second items are resolved and there are no other objections the plan may be confirmed and motion to dismiss denied as moot.

If 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.

18. 14-27550-B-13 GERARDO MUNOZ MOTION TO MODIFY PLAN
TOG-1 Thomas O. Gillis 1-5-17 [25]

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

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

First, the Debtor has not shown his ability to make plan payments since he has not provided evidence of his ability to continuing operating his business, which relies on the use of Debtor's commercial truck that is no longer operable and will be sold for parts. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Debtor's counsel must proceed to obtain approval of any additional attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330. An order confirming the previous plan filed on July 24, 2014, was entered on November 4, 2014, that limited approval of the Debtor's attorney's fees to $2,000.00 paid prior to the filing of the case and $2,000.00 paid through the plan.

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

The court will enter an appropriate minute order.

19. 13-33272-B-13 RICHARD/KARIN DUFF — MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
EGS-2 Mary Ellen Terranella — 1-24-17 [39]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Joint Motion to Permit Parties to Enter into Loan Modification Re: Debtors' Principal Residence Located at 1904 Rollingwood Drive, Fairfield, CA 94534 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 permit the loan modification requested.

Debtors seeks court approval to incur post-petition credit. Bayview Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. Although the modification will increase the mortgage payment from $2,267.00 to $2,583.55 per month, the modification is necessary because Debtors' monthly mortgage payments were scheduled to increase to over $3,200.00, which Debtors assert they cannot afford. However, Debtors state in their declaration that they will be eliminating childcare expenses of $270.00 per month and that this saved expense will go toward the increase in mortgage payments. Debtors further assert that they can make up the small difference of $47.00 by reducing discretionary expenses such as recreation. The modification will address unpaid arrears, will have a fixed interest rate of 2.832% for five years, and will have an increased interest rate to 3.50% for the remainder of the loan term. The new principal balance is $474,872.30.

The motion is supported by the Declaration of Richard A. Duff and Karin B. Duff. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

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.

20.	16-26572-B-13 DJC-1	FRANK RUBALCAVA AND ARIANA CABRAL Diana J. Cavanaugh	MOTION TO TRANSFER PERSONAL PROPERTY 1-22-17 [27]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion to Transfer Personal Property (2014 Dodge Ram 1500 pickup) 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.

Debtors move for court order authorizing Debtors to transfer a 2014 Dodge Ram 1500 pickup truck ("Vehicle") to Luis Carlos Camacho Reyes. Debtors listed the Vehicle on Schedule B with a value of $0.00 since Debtors claimed no ownership interest in the Vehicle. Debtors assert that they had financed the purchase of the Vehicle for Mr. Reyes, who was unable to obtain financing at the time. Debtors contend that they and Mr. Reyes had agreed that the Vehicle's pink slip would be transferred to him once the Vehicle was paid off. Mr. Reyes paid for the down payment, made monthly payments on the Vehicle, and has paid off the vehicle loan owed to Chrysler Capital. As such, Debtors seek court authorization to transfer the Vehicle to Mr. Reyes.

There being no opposition filed in response to this motion, the motion is granted.

The court will enter an appropriate minute order.

21. 16-28075-B-13 DENISE BATTS MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 1-9-17 [27]

Final Ruling: No appearance at the February 21, 2017, hearing is required.

The Motion to Confirm Debtors' [sic] First Amended Plan Filed January 9, 2007, 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 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 January 9, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

22.	16-26585-B-13 BMV-2	CATHERINE CRUZ AND JACK LAM Bert M. Vega	CONTINUED MOTION TO CONFIRM PLAN 12-19-16 [43]

Tentative Ruling: This matter was continued from February 7, 2017, to see if Capital One Bank USA, N.A., Coast to Coast Financial, and Sears/CBNA file proof of claim and to allow for the non-governmental deadline to file claims to pass.

The Motion to Confirm Second 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 was filed by the Trustee.

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

23. 11-29591-B-13 BRIAN SAECHAO
16-2030 PLC-2
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

MOTION TO EXTEND TIME AND/OR MOTION TO MODIFY SCHEDULING ORDER
1-20-17 [61]

Tentative Ruling: The Motion to Extend Discovery and Request to Modify Scheduling Order 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 determine the matter at the scheduled hearing.

24. 16-28074-B-13 EDITH INGRAM
JPJ-1 Chinonye Ugorji

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-25-17 [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 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 as of February 16, 2017.

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

First, the Debtor failed to appear at the § 341 meeting of creditors set for January 19, 2017 as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not timely submitted the Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee. The Debtor has failed to comply with 11 U.S.C. §521(a)(3) and LBR 3015-(b)(6).

Third, the Trustee cannot assess if the Debtor's plan complies with 11 U.S.C. § 1325(a)(4) because the Debtor has claimed exemptions under both §§ 703 and 704 of the California Code of Civil Procedure.

Fourth, the Debtor lists pension/retirement income under #8g of Schedule I but fails to list this as an asset under Line #21 of Schedule B. The Debtor has failed to fully and accurately provide 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 failed to fully comply with the duty imposed by 11 U.S.C. § 521(a)(l).

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.