UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 25, 2015 at 10:00 a.m.

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1. 14-27106-B-13 MICHAEL DEBERG — MOTION TO MODIFY PLAN
PLG-1 Steven A. Alpert — 1-26-15 [35]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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 Motion to Confirm the Modified Plan is denied without prejudice.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,329.21, which represents approximately one (1) Plan payment. By the date this matter is heard, an additional payment in the same amount will also be due. The Debtor has not carried his burden of showing that the Plan filed January 26, 2015 complies with 11 U.S.C. § 1325(a)(6).

Second, the Trustee is unable to effectively administer the Plan or ensure that all future Plan payments are made timely. The Plan filed January 26, 2015 does not properly account for all payments the debtors have paid to the Trustee to date.

Third, because the Debtor has not made payments timely under the terms of the previously confirmed Plan, the Trustee lacked sufficient funds to pay the post-petition contract installments to Carrington Mortgage Service, LLC for the month of August 2014. The modified Plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Fourth, feasibility cannot be fully assessed pursuant to 11 U.S.C. § 1325(a)(6) because the Plan terms listed in the Additional Provisions are unclear with regard to payments for December 2014 through February 2015.

Fifth, feasibility cannot be fully assessed pursuant to 11 U.S.C. § 1322(a)(1) because the Debtor does not appear to be providing the submission of further earnings as is necessary to execute the Plan. Based on the Debtor's Declaration in support of his motion, the Debtor is reducing Plan payments for December 2014 through February 2015 due to post-petition medical expenses. However, these medical bills were paid in full prior to the filing of this motion. As such, it is unclear why the Debtor filed a Motion to Modify to reduce payments moving forward to fund payments for post-petition medical debts that were paid in full prior to the filing of this motion.

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

2. 14-32311-B-13 LA KEISHA MATLOCK
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-5-15 [32]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, Debtor is delinquent to the Trustee in the amount of $1,400.00, which represents approximately one (1) Plan payment. The Debtor has not carried her burden of showing that the Plan filed December 23, 2014 complies with 11 U.S.C. § 1325(a)(6).

Second, feasibility of the Plan depends on the granting of a motion to value collateral for Capital One Auto Finance for a 2005 Mercedes as required by Local Bankr. R. 3015-1(j). Although the Debtor has filed a motion to value the collateral, it is set for hearing on March 11, 2015. The Trustee cannot recommend confirmation of the Plan unless the motion to value collateral is granted.

Third, feasibility of the Plan depends on the granting of a motion to value collateral of the Internal Revenue Service for the Debtor's personal property as required by Local Bankr. R. 3015-1(j). Although the Debtor has filed a motion to value the collateral, it is set for hearing on March 11, 2015. The Trustee cannot recommend confirmation of the Plan unless the motion to value collateral is granted.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed.

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

3. 14-32215-B-13 KAREN OLIVEIRA
JPJ-1 Karen Rae Oliveira

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-5-15 [18]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Debtor did not appear at the First Meeting of Creditors set for January 29, 2015 as required pursuant to 11 U.S.C. § 343. The Trustee cannot recommend confirmation of a Plan prior to a thorough examination of the Debtor under oath.

Second, the Debtor has not complied with 11 U.S.C. § 521(a)(3) because she has not provided the Trustee with copies of bank statements for checking, savings, and CD accounts listed on Schedule B of the Petition for months May through December 2014.

Third, feasibility of the Plan depends on the granting of a motion to value collateral of Wells Fargo for the 2nd Deed of Trust for the Debtor's residence. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion. The Debtor has not filed, served on the respondent creditor and Trustee, or set for hearing a valuation motion.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed.

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

4. 14-27616-B-13 TERRY MOON
BHT-1 Mark A. Wolff

MOTION FOR COMPENSATION BY THE LAW OFFICES OF LES ZIEVE FOR BRIAN HUY TRAN, CREDITOR'S ATTORNEY(S)
1-20-15 [70]

Tentative Ruling: The Motion for Attorney Fees and Costs under 11 U.S.C. § 506(b) and Issuance of Sanctions 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion for Attorney Fees and Costs under 11 U.S.C. § 506(b) is granted, and the request for sanctions is denied.

Brian H. Tran, the attorney ("Applicant") for the Real Time Resolutions, Inc. ("Creditor"), and Terry Moon ("Debtor"), by and through her attorney Mark A. Wolff ("Debtor's Attorney") agree that the Creditor is entitled to attorney's fees under 11 U.S.C. § 506(b). Creditor has an allowed secured claim and is an oversecured creditor, the fees incurred were reasonable as all work performed was done in protection of the Creditor's lien, and the fees are provided under the deed of trust signed by Debtor. As such, the Creditor will be granted reasonable attorney's fees and costs.

With regard to the request for sanctions, Bankruptcy Rule 9011(b) provides in relevant part that an attorney represents to the court that a written motion is not being presented for any improper cause, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. The actions of Debtor's Attorney may have created unnecessary delay and needlessly increased the cost of litigation by his failure to respond to Applicant's efforts at communication, which spanned over a two month period from late-September 2014 to early-December 2014. It was not until minutes before the trial held on December 4, 2014 that Debtor's Attorney called the courtroom deputy to state that he and the Debtor would not be appearing.

However, despite this, Debtor's Motion to Value was not presented for an improper purpose. It was presented to determine the value of Debtor's residence with the intent of finding that there was no equity to secure Creditor's claim. At the trial held on December 4, 2014, it was determined that the property had a value of $350,000.00, that there was equity to secure Creditor's claim, and Debtor's motion to value collateral was denied. Because Debtor's Motion to Value itself was not presented for an improper purpose, and because the Creditor's request for sanctions fails to comply with the basic requirements of Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) in that it was (i) not served separately from the motion for attorney's fees and (ii) was not served 21 days prior to filing, Creditor's request for sanctions is denied. For avoidance of doubt, even if Creditor were to attempt to comply with the basic requirements of Rule 9011(c)(1)(A) a renewed request for sanctions would nevertheless be denied based on the court's conclusion that the Debtor's Motion to Value was not presented for an improper purpose. Creditor shall have thirty (30) days from the date of this tentative ruling to file a motion for allowance of attorney' fees, which shall be set for hearing.

5. 12-29625-B-13 ERICK MENDOZA
RFM-1 C. Anthony Hughes

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-22-15 [57]

MMCA VS.

Final Ruling: No appearance at the February 25, 2015 hearing is required.

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

The Motion for Relief From the Automatic Stay is granted.

MMCA ("Movant") seeks relief from the automatic stay with respect to an asset identified as 2011 Mitsubishi Lancer, VIN ending in 38196 (the "Vehicle"). The moving party has provided the Declaration of Lawrence Stegall ("Stegall Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Stegall Declaration provides testimony that Debtor has not made four (4) post-petition payments, with a total of $2,866.50 in post-petition payments past due. There are no pre-petition payments in default.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $26,559.36, as stated in the Stegall Declaration, while the value of the Vehicle is determined to be $25,950.00, as stated in Schedules B and D filed by Debtor.

The Stegall Declaration also seeks to introduce evidence establishing the value of the asset. Though the NADA valuation is attached as an Exhibit, it is not properly authenticated.

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 since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow MMCA, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objection from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

6.	14-32125-B-13 JPJ-1	RICK VENTURA Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, CHAPTER 13 TRUSTEE AND/OR MOTION TO DISMISS CASE 2-5-15 [24]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

The Chapter 13 Trustee cannot recommend confirmation of the Plan filed December 30, 2014 until he has completed a thorough review of the Debtor's Plan, bankruptcy schedules, and related financial documents pursuant to 11 U.S.C. § 1325. The Trustee "held open" the meeting of creditors to allow Debtor additional time to file his last 4 years of tax returns pursuant to 11 U.S.C. § 1308. The continued creditor's meeting will be held on March 5, 2015 at which time the Debtor must have filed these tax returns and provided the Trustee with copies. The Trustee cannot assess the feasibility of the Plan or whether the Plan has been proposed in good faith until the tax returns have been filed and can be reviewed.

Although the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), as requested by the Chapter 13 Trustee, the confirmation hearing will be continued to March 9, 2015 to be heard after the § 341 Meeting held on March 5, 2015.

7.	14-31127-B-13 SDH-1	DENNIS/JASMINE EHRENBERGER Scott D. Hughes	MOTION TO APPROVE LOAN MODIFICATION 1-20-15 [24]

CONTINUED TO 3/02/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

8. 14-31932-B-13 MICHAEL MAJARAIS
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA
1-23-15 [13]

Final Ruling: No appearance at the February 25, 2014 hearing is required.

The Motion to Value secured claim 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 Motion to Value secured claim of Hyundai Capital America ("Creditor") is granted and the secured claim is determined to have a value of $13,000.00.

The Motion filed by Michael A. Majarais ("Debtor") to value the secured claim of Hyundai Capital America ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Hyundai Veloster("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $13,000.00 as of the petition filing date. As the owner, the 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).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 3, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,332.33. Therefore, 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 $13,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

9. 14-21240-B-13 DIANE OHARA
PGM-3 Peter G. Macaluso
Thru #10

CONTINUED MOTION TO CONFIRM PLAN
7-7-14 [44]

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is granted.

The Chapter 13 Trustee opposes the motion to confirm on the grounds that feasibility of the Plan depends on the Debtor obtaining a loan modification with Ocwen Loan Servicing. On February 16, 2015, the Debtor lodged with the court a copy of a letter from Ocwen Loan Servicing indicating that the Debtor's application is now complete and that all documentation has been provided. The Trustee's objection to confirmation appears to be resolved.

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

10. 14-21240-B-13 DIANE OHARA
PGM-3 Peter G. Macaluso

CONTINUED COUNTER MOTION TO DISMISS CASE
8-4-14 [51]

Tentative Ruling: The Motion to Confirm the 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 Plan having been confirmed, the Continued Counter Motion to Dismiss Case is denied.

11. 10-28849-B-13 JEFFREY/AMY BOOTH
ADR-3 Justin K. Kuney

CONTINUED MOTION TO MODIFY PLAN
9-24-14 [48]

Thru #12

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 35-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 Motion to Confirm the Modified Plan is denied without prejudice.

The original hearing on Debtors' Motion to Modify the Chapter 13 Plan was continued from February 11, 2015 to February 25, 2015, at which time the Motion for Additional Attorney's Fees is to be heard.

Despite the court's tentative ruling with regard to the Motion for Additional Attorney Fees, the Plan does not properly account for all the payments the Debtors have paid to the Trustee to date. Additionally, Debtors have not cured their default in payments under the proposed Modified Plan.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

12. 10-28849-B-13 JEFFREY/AMY BOOTH
ADR-4 Justin K. Kuney

MOTION FOR COMPENSATION FOR JUSTIN K. KUNEY, DEBTORS' ATTORNEY(S)
2-5-15 [64]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion for Allowance of Professional Fees is granted in part and denied without prejudice in part.

FEES REQUESTED

Justin K. Kuney, the Attorney ("Applicant") for the Chapter 13 Debtors ("Clients"), makes a request for additional attorney fees in this case. The period for which the fees are requested is for the period July 29, 2009 through an anticipated August 1, 2015.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Pre-filing preparation: Applicant spent 7.7 hours in this category and requests a total of $1,140.00.

Pre-confirmation services: Applicant spent 6.4 hours in this category and requests a total of $945.00.

Post-confirmation services: Applicant spent 2 hours in this category and requests a total of $465.00.

Post-confirmation plan modification: Applicant spent 3.4 hours in this category and requests a total of $682.50.

Application for Compensation: Applicant spent 2.5 hours in this category and request a total of $412.50.

Reasonably anticipated necessary remaining work: Applicant anticipates spending 1.6 hours in this category and requests a total of $412.50.

As such, the motion exhibits a total of 23.6 hours of work (and not 25.9 hours as indicated on Dkt. 64, p. 9 and Dkt 68, p. 6) and total charges of $4,057.50.

Since the Applicant has received $1,575.00 prior to filing this fee application, Applicant requests additional attorney's fees in the amount of $2,482.50 pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016.

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 are beneficial and necessary to the Client and bankruptcy estate and reasonable.

However, the court will not award fees at this time for "anticipated" services to be performed in the future.

Applicant is allowed, and the Trustee is authorized to pay, the $2,070.00 reflective of the following amounts as compensation to this professional in this case:

Fees	$2,482.50
Expenses	$ 0.00
Less "anticipated" fees	($ 412.50)

After the "anticipated" services are actually performed Applicant may re-file a motion seeking approval of those fees at which time Applicant shall be required to demonstrate that such fees were reasonable and necessary.

13. 14-32352-B-13 CORY/SIOUX ENOS
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-5-15 [18]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Debtors did not appear at the First Meeting of Creditors as required pursuant to 11 U.S.C. § 343. The meeting of creditors was subsequently continued to February 19, 2015 to allow the Debtors to be examined under oath. However, the Trustee cannot recommend confirmation of the Plan until after the Meeting has concluded.

Second, the Debtors are delinquent to the Trustee in the amount of $3,237.00, which represents approximately one (1) Plan payment. By the date of this hearing, an additional Plan payment in the amount of $3,237.00 will also be due. The Debtors have not carried their burden of showing that the Plan filed January 7, 2015 complies with 11 U.S.C. § 1325(a)(6).

Third, the Trustee is unable to fully assess the feasibility of the Plan filed January 7, 2015. Although the Debtors have provided the Trustee with a Class 1 Checklist, they have not provided the Trustee with the Authorization Form and, thus, have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-(c)(3).

Fourth, the Plan will take approximately 79 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d), and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fifth, the Plan filed January 7, 2015 does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Statement of Current Monthly Income (Form 22C) shows that the Debtors' monthly disposable income is $28.85 and the Debtors must pay no less than $17,331.00 to general unsecured creditors. The Trustee calculates that the Plan will pay only $3,461.89 to Class 7 general unsecured creditors within the 60 month plan term.

Sixth, the Trustee is unable to fully assess the feasibility of the Plan filed January 7, 2015. Although the Joint Debtor provided the Trustee with copies of her pay advices, the Debtor has not provided the Trustee with copies of his payment advices or evidence of income received within the 60 day period prior to the filing of the petition. Thus, the Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Seventh, feasability of the Plan filed January 7, 2015 depends on the granting of a motion to value collateral of Green Tree Servicing for the 2nd Deed of Trust on Debtors' residence. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion and the hearing on valuation must be concluded before or in conjunction with the confirmation of the Plan. The Debtors have not filed, set for hearing, or served on the respondent creditor and Trustee a motion to value collateral.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Trustee's 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.

14. 14-31853-B-13 AID-1 — PETER ZUBENKO, Scott J. Sagaria — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, 1-13-15 [15]

HEBERT U.S. REAL ESTATE COMPANY VS.

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given by the Movant from the original hearing date of January 27, 2015, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.

15. 14-32457-B-13 JIMMY HAASE
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-5-15 [17]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, feasability of the Plan filed December 30, 2014 depends on the granting of a motion to value collateral of New Century Mortgage/Ocwen for the 2nd Deed of Trust on Debtors' residence. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion and the hearing on valuation must be concluded before or in conjunction with the confirmation of the Plan. The Debtors have not filed, set for hearing, or served on the respondent creditor and Trustee a motion to value collateral.

Second, the Debtor's attorney's fees are in the amount of $5,000.00 in connection with Plan confirmation, which exceeds the maximum fee of $4,000.00 that may be charged in nonbusiness cases according to Local Bankr. R. 2016-1. An amount of $1,500.00 was already paid prior to filing and the Plan proposes to pay $3,500.00 through the Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed.

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

16. 14-31759-B-13 WILLIAM BARRANTES
EGS-1 Richard L. Sturdevant

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
1-26-15 [33]

Final Ruling: No appearance at the February 25, 2015 hearing is required.

The Motion to Confirm Termination of Stay 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 Motion to Confirm Termination of Stay is granted.

Pursuant to 11 U.S.C. § 362(c)(4)(A) and 11 U.S.C. § 362(j), the automatic stay that arose in the instant bankruptcy case did not come into effect. The instant bankruptcy case is the third Chapter 13 bankruptcy filed within a period of one (1) year affecting the property described as 5261 Gold Dust Drive, Placerville, California.

Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorney's fees.

There also being no objection from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

Additionally, the Chapter 13 Trustee has filed a nonopposition to the Motion.

17. 14-32364-B-13 MICHAEL/PAULA RHOADES — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
JPJ-1 Peter L. Cianchetta — 2-5-15 [31]
Thru #18

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection.

First, Debtors are delinquent to the Trustee in the amount of $3,066.83, which represents approximately one (1) Plan payment. By the date of the hearing, an additional Plan payment in the amount of $4,066.83 will also be due. The Debtors have not carried their burden of showing the Plan filed January 6, 2015 complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtors have not filed their last 4 years of tax returns pursuant to 11 U.S.C. § 1308 and, as a result, the Trustee cannot recommend confirmation of the Plan filed January 7, 2015 until he has completed a thorough review of the Debtors' Plan, bankruptcy schedules, and related financial documents. 11 U.S.C. § 1325. The Trustee "held open" the Meeting of Creditors, which will be continued to February 26, 2015 at which time the Debtors must have filed these tax returns and provided the Trustee with copies.

Third, the Joint Debtor has not provided a copy of her 2014 W-4 form from her employer to the Trustee, as requested at the 341 Meeting of Creditors on January 29, 2015, and thus has not met the requirements of 11 U.S.C. § 521(a)(3).

Fourth, the Plan filed January 7, 2015 does not comply with 11 U.S.C. § 1325(a)(6) as the Debtors cannot fund the proposed Plan payments. The Plan lists plan payments in the amount of $3,066.83 per month, but Schedule J of the Petition lists Debtors' monthly net income at $1,780.50, which is less than the plan payment amount. Debtors and their Attorney testified at the 341 Meeting of Creditors on January 29, 2015 that they intend to use proceeds from an expected Debtor Refund from the previously dismissed case in the amount of $55,816.30 to fund the difference in their monthly net income and proposed plan payments in this case. However, the Debtors did not disclose this refund on Schedules I or J and have not exhibited their ability to make the proposed plan payments.

Fifth, the Plan further does not comply with 11 U.S.C. § 1325(a)(6) as the Debtors have listed the ongoing mortgage for their residence in Class 2A of the Plan. The mortgage is held by Preveti Family Holdings, LLC with a balance of $155,000.00 at $2,767.86 per month. However, Preveti Family Holdings, LLC filed a Proof of Claim on February 3, 2015 in the amount of $304,616.94 (Proof of Claim #2). In order to pay this Claim in full over the course of 60 months, the monthly dividend to this creditor would need to be at least $5,076.95 and the Debtors' monthly Plan payment would need to be at least $5,721.00.

Sixth, since the Claim of Preveti Family Holdings, LLC is understated by approximately $150,000.00, the Trustee calculates that the Plan will take approximately 112 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).

Seventh, the Plan does not appear to have been proposed in good faith as required by 11 U.S.C. § 1324(a)(3). Good faith depends on the totality of circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1998). Factors to be considered in determining good faith include, but are not limited to:

1. The Debtors' employment history, ability to earn, and likelihood of future increases in income.

   The Debtors' previous Chapter 13 case (Case # 13-31277) was filed on August 28, 2013 and dismiss on December 19, 2014 for failure to make plan payments. Here, the Debtors have not made their first Plan payment that was due January 25, 2015. By failing to make timely payments in this case or exhibit their ability to fund the proposed plan payments, the Debtors have not complied with 11 U.S.C. § 1325(a)(6).

2. The accuracy of the Plan's statements of debts, expenses, and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court.

   Here, there are discrepancies between unsecured non-priority debts listed in Debtors' Schedule F filed on January 7, 2015 and that of the previous Chapter 13 case filed on August 28, 2013, discrepancies between a judgement amount that was awarded to Creditors John and Mary Davey ("Creditors") and that of the Proof of Claim filed by the Creditors, and discrepancies within the Petition by listing a judgment levied against Debtors in the Statement of Financial Affairs but not listed on Schedules D, E, or F of the Petition.

3. The motivation and sincerity of the Debtors in seeking Chapter 13 relief.

   Here, the Debtors did not list their previous Chapter 13 bankruptcy case (Case 13-31277) on the Petition filed December 24, 2014. Additionally, there is a conflict of interest with Debtors' counsel because he is also the holder of the majority of the unsecured claims listed in this case.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. The Trustee has requested that the confirmation hearing be continued to March 16, 2015 to allow the Trustee to conclude the § 341 Meeting and examine the Debtors' tax return filings; however, due to the number of infirmities the court has identified in this tentative ruling, the Trustee's request to continue this confirmation hearing is denied and the Debtors shall instead file an amended Plan which shall be re-set for hearing.

18. 14-32364-B-13 MICHAEL/PAULA RHOADES
MHK-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY PREVITI FAMILY HOLDINGS, LLC
2-3-15 [25]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection.

First, the Plan does not appear to have been proposed in good faith as required by 11 U.S.C. § 1324(a)(3). Good faith depends on the totality of circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1998). Factors to be considered in determining good faith include, but are not limited to:

1. The motivation and sincerity of the Debtors in seeking Chapter 13 relief.

   Here, the Debtors did not list their previous Chapter 13 bankruptcy case (Case 13-31277) on the Petition filed December 24, 2014.

   Additionally, the Plan does not accurately disclose the nature of the claims that the Debtors have asserted against Creditor. The Plan states that the Debtors are entitled to an "offset" on the claim and state that they have filed an adversary proceeding to collect it. However, Debtors have not filed an adversary proceeding in this case, and do not mention that an adversary proceeding that they initiated against Creditors and others in the previous Chapter 13 bankruptcy case was dismissed by stipulation, before the parent case was dismissed.

2. The accuracy of the Plan's statements of debts, expenses, and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court.

   Here, the Debtors scheduled Previti Family Holdings, LLC ("Creditor") as having a claim in the amount of only $155,000.00. However, in the previous Chapter 13 bankruptcy case, Debtors scheduled Creditor's claim at $245,000.00 and Creditor filed a proof of claim in 2013 case in the amount of $245,080.67. In the present case, Creditor filed a Proof of Claim on February 3, 2015 in the amount of $304,616.94 (Proof of Claim #2).

   Additionally, there are discrepancies between unsecured non-priority debts listed in Debtors' Schedule F filed on January 7, 2015 and that of the previous Chapter 13 case filed on August 28, 2013. In the previous Chapter 13 case, Debtors scheduled unsecured debt at approximately $18,000.00, but in this case schedule approximately $14,000.00.

Second, the Plan does not satisfy 11 U.S.C. § 1325(a)(5). Since the Creditor does not accept the Plan and has filed a Proof of Claim on February 3, 2015 in the amount of $304,616.94 (Proof of Claim #2), the Plan must provide that the lien is retained and the value of the property distributed to the claim holder is not less than the allowed amount of the claim. 11 U.S.C. § 1325(a)(5).

Third, the Debtors may not modify Creditor's secured claim. Bankruptcy Code § 1322(b)(2) gives Debtors the right to modify secured claims, except those, like Creditor's, that are secured by a security interest in only the Debtors' principal residence.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. The Creditor's request for adequate protection payments will be denied without prejudice. The Creditor has provided no legal basis demonstrating that adequate protection is required other than asserting that it is time for it to receive some money because it has received nothing from the Debtors or the Trustee in the previous Chapter 13 bankruptcy case.

19.	14-32370-B-13 JPJ-1	LYNETTE HENRY Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-5-15 [19]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

The Debtor is delinquent to the Trustee in the amount of $885.00, which represents approximately one (1) Plan payment. By the date of the hearing, an additional Plan payment in the amount of $885.00 will also be due. The Debtor has not carried her burden of showing that the Plan filed December 26, 2014 complies with 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed.

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

20. 14-32271-B-13 RICHARD/CAROLYN NORMAN — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Michael Benavides — 2-5-15 [17]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Debtors' attorney's fees are in the amount of $5,000.00 in connection with Plan confirmation, which exceeds the maximum fee of $4,000.00 that may be charged in nonbusiness cases according to Local Bankr. R. 2016-1. Additionally, the attorney's fees listed in the Plan do not match the attorney's fees listed on the Disclosure of Compensation of Attorney by Debtors (2016B) or the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys forms. According to the Plan, the total attorney's fees are $5,000.00. On the other hand, the 2016B form filed on December 22, 2014 indicates that the total attorney's fees are $3,600.00. Lastly, the Rights and Responsibilities form filed January 29, 2015 indicates that the total attorney's fees are $4,000.00.

Second, the Plan filed December 22, 2014 does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Line 33e of the Means Test lists an expense of $1,672.43 of the 1st Deed of Trust held by Wells Fargo on the Debtors' residence. However, according to Debtors' testimony at the 341 Meeting of Creditors, their monthly mortgage payment is approximately $579.19. When accounting this discrepancy, Line 35 of the Means test should be $1,170.38 and the Debtors should pay no less than $70,222.80 to general unsecured creditor. The Plan will pay only $4601.27 to the general unsecured creditors.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed. Furthermore, no attorney's fees or costs will be approved in connection with the confirmation of the Plan. Counsel shall proceed to obtain approval of his attorney's fees and costs by filing a separate motion pursuant to 11 U.S.C. § 330.

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.

21.	14-22472-B-13 PPR-1	TIMOTHY KRUSE Michael David Croddy	MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF FROM CO-DEBTOR STAY AND/OR MOTION FOR ADEQUATE PROTECTION 1-23-15 [122]

BANK OF AMERICA, N.A. VS.

HEARD ON 2/23/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

22. 14-32275-B-13 JPJ-1 | RAY/ROSE DEPRIEST
W. Scott de Bie | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
2-5-15 [19]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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 offer 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 sustain the Objection.

Although the Debtor's attorney was present at the § 341 Meeting of Creditors, the Debtors did not appear at the First Meeting of Creditors set for January 29, 2015 as required under 11 U.S.C. § 343. The Meeting was subsequently continued to February 19, 2015 to allow the Trustee the opportunity to examine the Debtors under oath However, the Trustee cannot recommend confirmation of a Plan until such an examination has taken place.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the Plan is not confirmed.

23.	14-32190-B-13 MB-1	JUAN/PATRICIA VIGIL Mario Blanco	MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES, INC. 1-22-15 [15]

Final Ruling: No appearance at the February 25, 2015 hearing is required.

The Motion to Value 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 Motion to Value secured claim of Springleaf Financial Services, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Juan C. Vigil and Patricia E. Vigil ("Debtors") to value the secured claim of Springleaf Financial Services, Inc. ("Creditor") is accompanied by Debtors' declaration. Debtor is the owner of the subject real property commonly known as 636 Lacadena St., Vallejo, California ("Property"). Debtors seek to value the Property at a fair market value of $344,000.00. as of the petition filing date. As the owner, 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).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The first deed of trust secures a claim with a balance of approximately $368,872.00. Creditor's second deed of trust secures a claim with a balance of approximately $79,706.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the

terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

24. 14-21394-B-13 PATRICK/SUZANNE CLARK — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-1 W. Scott de Bie — 1-27-15 [58]

S&J ADVERTISING, INC. VS.

Tentative Ruling: The court issues no tentative ruling.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.