UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

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

1.	11-49404-B-13 SDB-2	KENNETH/CHRISTINA HAWKINS W. Scott de Bie	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 2-19-15 [62]

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

2. 15-21123-B-13 MELISSA MEDINA
NLG-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-15 [10]

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

CASE DISMISSED 3/3/15

3. 12-23935-B-13 STACEY COUNCILMAN MOTION TO SELL
CK-2 Catherine King 3-10-15 [36]

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the a Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Movant proposes to sell the property described as 1015 Tulare Court, Redding, California.

The proposed purchasers of the property are Dennis Starkey and Cindy Starkey ("Buyers"). As shown in the Seller's Closing Statement (Dkt. 39, Exh. B, p. 13), the sale price is $280,000.00 paying Seterus, holder of the 1st Deed of Trust on the property, Chase Bank, holder of the 2nd Deed of Trust on the real property, county taxes, closing costs, and commission. The remaining balance the Debtor would net from the sale is $0.00.

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.

4. 15-21636-B-13 WILLIAM WAY MOTION TO EXTEND AUTOMATIC STAY
JLK-1 James L. Keenan 3-11-15 [14]

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 to Extend the Automatic Stay is granted.

William Way ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case (No. 14-26819) was dismissed on December 3 2014 after Debtor failed to confirm his prior plan within the court's 75-day limit period (No. 14-26819, Dkt. 35). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor here states that he is able to perform under the terms of his plan proposed in the current case as he was in the last, and that plan performance was not at issue in the prior case. Additionally, Debtor asserts that the petition and plan in this case have been filed in good faith because he attempted, but was unable, to comply with the court's 75-day time limit for confirmation. In fact, the debtor states that he had an unopposed motion for confirmation pending when his prior case was dismissed.

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

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

5. 14-26647-B-13 RONALD/KELLY BRIGGS MOTION TO CONFIRM PLAN
JLB-4 James L. Brunello 2-11-15 [112]

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 by Creditor MUFG Union Bank, N.A. and Chapter 13 Trustee Jan P. Johnson, the court will address the merits of the motion at the hearing.

The Motion to Confirm the Amended Plan is denied without prejudice.

First, Debtors' plan modifies the claim of MUFG Union Bank, N.A., which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and 1325(a)(1).

Second, the claim of El Dorado County is misclassified as a Class 1 claim. Since the claim of El Dorado County is a secured claim that will complete within the life of the plan, it should therefore be classified as a Class 2A claim.

Third, the co-Debtor does not provide corroborating proof that he will actually receive an income of $17,500.00 - $18,000.00. The feasibility of the plan cannot be determined and thus the plan cannot be confirmed under 11 U.S.C. § 1325(a)(6).

Fourth, the Debtors' plan gives 2 different scenarios - one in which the Debtors sell property by an unspecified date and another in which the Debtors do not sell the property at all. The ability to fund the plan is speculative at this point, regardless of whether the property is sold, and is dependent on potential employment in the future.

Fifth, an adversary proceeding to avoid the judgment lien of MUFG Union Bank was to be filed within 45 days of the court's Order to Show Cause (Dkt. 118), which calculates to be a filing deadline of April 2, 2015. To date, an adversary proceeding has not been filed with the court. The Trustee is unable to fully assess feasibility of the plan pursuant to 11 U.S.C. §§ 1325(a)(6) and 1325(a)(4).

Sixth, depending on whether the Debtors file an adversary proceeding by April 2, 2015, the Debtors may be over the secured debt limit pursuant to 11 U.S.C. § 109(e) and may be ineligible for Chapter 13 bankruptcy pursuant to 11 U.S.C. § 109(e).

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

6. 14-32247-B-13 ROBERT/PAULINE COBBLER — MOTION TO APPROVE LOAN MODIFICATION
JSO-1 Jeffrey S. Ogilvie — 2-25-15 [19]

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

The Motion to Approve 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 Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Robert Cobbler and Pauline Cobbler ("Debtors") seeks court authorization to modify their first mortgage secured by the property located at 6770 Eastmont Avenue, Redding, California. CitiMortgage, Inc. ("Creditor") has agreed to a loan modification. The proposed payment will include principal, interest and impound account and the new monthly payment for principal, interest and impound account will be $1,867.57 beginning March 1, 2015 through February 1, 2045, with adjustments to the impound account annually after 1 year. Debtors are curing the arrears with their second mortgage through their Chapter 13 Plan, Debtors will not receive cash from the loan modification, the balance of pre-petition mortgage arrears, if any, shall be cured by the loan modification, Debtors doe not intend to pay off the plan.

The Motion is supported by the Declaration of Robert Cobbler.

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 to Approve the Loan Modification is granted.

7.	10-24351-B-13 **Thru #8**	ROBERT/MICHELLE REID Mark A. Wolff	OBJECTIONS TO TRUSTEE'S FINAL REPORT AND ACCOUNT 2-26-15 [130]

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

8.	10-24351-B-13 BML-1	ROBERT/MICHELLE REID Mark A. Wolff	MOTION TO DISMISS CASE 2-24-15 [124]

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

9. 14-31853-B-13 PETER ZUBENKO
AID-1 Michael K. Johnson

HEBERT U.S. REAL ESTATE
COMPANY VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-15 [15]

REMOVED FROM CALENDAR. ORDER ENTERED ON MARCH 23, 2015.

10. 11-23560-B-13 RODERICK/TERRY WARDLEY MOTION TO MODIFY PLAN
HLG-1 Brunella M. Palomino 2-9-15 [56]

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

The Motion to Confirm the Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

11. 14-32162-B-13 WILLIAM HENSON
Bruce Charles Dwiggins

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
2-19-15 [15]

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.

The Debtor's proposed Plan provides no treatment for U.S. Bank, N.A's ("Creditor") pre-petition arrearages in the amount of $659.22 related to an advance for taxes.

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.

12. 15-21167-B-13 LIBERTY MAHINAY
Ronda N. Edgar

MOTION TO EXTEND AUTOMATIC STAY
2-19-15 [9]

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

The Motion to Extend 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 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 Extend the Automatic Stay is denied.

Liberty Mahinay ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was incorrectly filed in the Northern District of California (Case No. 15-30012) on January 7, 2015 and was subsequently dismissed on February 12, 2015, because the Debtor failed to submit necessary documents.

Upon motion of a party in interest, the court may extend the automatic stay beyond 30 days if, after notice and a hearing completed before the 30-day period expires, the moving party demonstrates that the filing of the second case was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor's previous bankruptcy case was filed in the wrong district and done in an emergency situation to stop the foreclosure of her property. The Debtor's present case was filed in the correct district of the Eastern District of California on February 16, 2015. However, in order for the court to extend the automatic stay, the hearing must be completed before the 30-day period expires pursuant to 11 U.S.C. § 362(c)(3)(B). Here, the 30-day period expired on March 18, 2015. As such, the motion to extend automatic stay is denied.

13. 15-20674-B-13 APRIL WARD
JPJ-1 Andrew A. Moher

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-4-15 [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 Debtor did not appear at the first Meeting of Creditors as required pursuant to 11 U.S.C. § 343. The Meeting of Creditors was continued to March 19, 2015. The Trustee cannot recommend confirmation of a plan until after a thorough examination of the Debtor under oath.

Second, the plan specifies a monthly payment of $0.00 for administrative expenses but states that fees of $4,0000.00 shall be paid through the plan. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

The 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.

14. 15-20376-B-13 HARRY ROTH
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-4-15 [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, three secured claims of Internal Revenue Service are mis-classified as Class 1 claims. The proper classification of this secured claim is Class 2, with one entry only in the Class 2 table.

Second, the plan understates the pre-petition arrearage amounts to the Internal Revenue Service in Class 1 at $0.00, $0.00, and $0.00. Based on the proof of claim filed by the Internal Revenue Service, the Trustee calculates the plan will take approximately 72 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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.

15. 10-29479-B-13 TIM/DEBRA BELL — MOTION TO MODIFY PLAN
CLH-6 Cindy Lee Hill — 2-13-15 [89]

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

The Motion to Confirm the Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

16. 15-20583-B-13 ROBERT/DIANNA DANIEL — MOTION TO VALUE COLLATERAL OF BARCLAYS BANK PLC
BLG-1 Pauldeep Bains — 2-13-15 [17]

Final Ruling: No appearance at the March 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 Barclays Bank PLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Robert Daniel and Dianna Daniel ("Debtors") to value the secured claim of Barclays Bank PLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1611 Centennial Dr, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $285,916.00 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).

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.

11 U.S.C. § 506(a) (emphasis added). 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.

A senior lien secures a claim with a balance of approximately $358,555.61. Barclays Bank PLC's second deed of trust secures a claim with a balance of approximately $90,650.85. 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.

17. 15-20089-B-13 MARTHA ROCHA
SNM-1 Stephen N. Murphy

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
2-20-15 [14]

Tentative Ruling: The court issues no tentative ruling.

The Motion for Sanctions for Violation of the Automatic Stay has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1).

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.

18. 15-20391-B-13 JPJ-1 **Thru #19**

ESMERELDA WYMORE
Brunella M. Palomino

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-4-15 [27]

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's attorney failed to appear at the first Meeting of Creditors. The Trustee cannot recommend confirmation of a plan prior to a thorough examination of the Debtor under oath.

Second, the Debtor is delinquent to the Trustee in the amount of $1,410.00, which presents approximately 1 plan payment. By the date this objection is heard, an additional plan payment in the amount of $1,410.00 will also be due. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release Information within 14 days after the fling of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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.

19. 15-20391-B-13 PD-1

ESMERELDA WYMORE
Brunella M. Palomino

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
3-4-15 [23]

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 overrule the Objection.

Creditor Deutsche Bank National Trust Company asserts that the Debtor's plan does not provide for the full value of Creditor's claim pursuant to 11 U.S.C. §

1325(a)(5)(B)(ii), and does not cure Creditor's pre-petition arrears as required under 11 U.S.C. § 1322(b)(5). However, Creditor has not yet filed a proof of claim and, therefore, the claims cannot be confirmed by the court. The exhibits that the Creditor has filed do not assist the court since pages are missing (Dkt. 25). Once a proof of claim is filed or other evidence of claim amount provided, Creditor may renew its objection to the plan or any subsequently filed plan that Creditor believes is similarly deficient.

The Objection is overruled. Nonetheless, for reasons stated in Item 18, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) 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. 15-20392-B-13 DERWIN TERRY — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 — Pro Se — 3-4-15 [24]
Thru #21

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 as required under 11 U.S.C. § 343.

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 21(a)(1)(B)(iv).

Third, the Debtor has no provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, Schedule I does not provide information regarding the amount of the Debtor's monthly income, and Schedule J does not provide information regarding any of the Debtor's monthly expenses.

Fifth, the Debtor's plan is incomplete because it lists a monthly plan payment of $100.0 in Section 1.01 but does not provide any other information.

Sixth, the Debtor is delinquent to the Trustee in the amount of $100.00, which is approximately 1 plan payment. By the date this objection is heard, an additional plan payment in the amount of $100.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, the Debtor is indicated as married on Form 22C. However, no information regarding he income of the non-debtor spouse or any other information regarding income and expenses has been provided. It cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Eighth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

The plan does not appear to have been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) because the Debtor filed two previous bankruptcy petitions in the past eight years (Case No. 13-27404-A-7 and 12-31856-C-13C) but did not disclose either of these cases on the petition 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.

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.

21. 15-20392-B-13 DERWIN TERRY
MDE-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY ONEWEST BANK, N.A.
2-11-15 [21]

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, Debtor's plan does not provide for the curing of the default and maintenance payments on Creditor OneWest Bank, N.A.'s claim pursuant to 11 U.S.C. § 1322(b)(5). Creditor filed a proof of claim on March 16, 2015 (Claim 1).

Second, the plan does not provide how the Debtor will be able to make all the payments under the plan pursuant to 11 U.S.C. § 1322(b)(5). The plan merely indicates monthly payments of $100.00 to the Trustee but provides no additional information.

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.

22. 11-22595-B-13 JOANNE BRONSON MOTION TO MODIFY PLAN
JDM-3 Edward A. Smith 1-29-15 [56]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 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).

The Motion to Confirm the Modified Plan is conditionally granted.

The Debtor states she mailed a cashier's check in the amount of $14,000.00 to Chapter 13 Trustee Jan P. Johnson on March 18, 2015, the deadline to respond to Trustee's objection pursuant to Local Bankr. R. 9014-1(f)(1)(C). Debtor further asserts that she will pay the Trustee the sum of $6,249.33 no later than 4:00 p.m. on March 25, 2015.

The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed on the condition that the remaining sum of $6,249.33 is received by the Trustee no later than 4:00 p.m. on March 25, 2015. If the payment is not received timely, the Trustee shall file a declaration and order denying the motion.

23. 10-51597-B-13 PRICILIANO ROLON AND MARIA JIMENEZ
PD-1 Thomas O. Gillis

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-15 [130]

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion for Relief From the Automatic Stay is granted unless Federal National Mortgage Association confirms receipt of Debtors' $1,168.50 at the hearing on this matter.

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 152 Vine St., Maxwell, California (the "Property"). Movant has provided the Declaration of Ashley Vidos ("Vidos Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Vidos Declaration states that Debtors have failed to provide proof of flood insurance as required under the Deed of Trust, resulting in the Movant obtaining flood insurance on behalf of the Property and Debtors being in default to the Movant in the amount of $1,168.50.

Opposition has been filed by Priciliano Rolon and Maria Jimenez ("Debtors"), who state that they are collecting funds to reimburse the Movant for the purchase of the flood insurance. Debtors assert that they will have the funds by February 27, 2015 and will forward a check to the Movant's attorney. Debtors state that payment to cure the default in the amount of $1,168.50 will be received prior to the hearing on this matter.

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). Should the default not be cured prior to the hearing on this matter, the court determines that cause exists for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

Although 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 attorneys' fees.

There also being no request to waive the 14-day stay of enforcement under Rule 4001(a)(3), no waiver shall be granted.

24. 15-20697-B-13 JULIA/LORELEI CARROLL
ULC-1 John S. Sargetis
Thru #25

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A.
2-19-15 [16]

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

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). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of One Bank USA, N.A. ("Creditor") against property of Julia Carroll and Lorelei Carroll ("Debtors") commonly known as 4721 Palomino Lane, North Highlands, California ("Property").

A judgment was entered against co-Debtor in favor of Creditor in the amount of $25,937.42. An abstract of judgment was recorded with Sacramento County on May 23, 2011, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $275,080.00 as of the date of the petition. The unavoidable consensual liens total $301,586.50 as of the commencement of this case are stated on Debtors' Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

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

25. 15-20697-B-13 JULIA/LORELEI CARROLL
ULC-2 John S. Sargetis

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A.
2-19-15 [21]

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

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). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of One Bank USA, N.A. ("Creditor") against property of Julia Carroll and Lorelei Carroll ("Debtors") commonly known as 4721 Palomino Lane, North Highlands, California ("Property").

A judgment was entered against co-Debtor in favor of Creditor in the amount of $5,327.28. An abstract of judgment was recorded with Sacramento County on September 9, 2014, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $275,080.00 as of the date of the petition. The unavoidable consensual liens total $301,586.50 as of the commencement of this case are stated on Debtors' Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

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