UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 8, 2015 at 10:00 a.m.

---

1. 12-35604-B-13 LASHUNDA CORMIER — MOTION TO MODIFY PLAN
PGM-7 Peter G. Macaluso — 2-19-15 [123]

Final Ruling: No appearance at the April 8, 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.

2. 13-20207-B-13 CORNELIA CATA
PGM-9 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
3-5-15 [243]

Tentative Ruling: The Motion for Allowance of Professional Fees 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).

The Motion for Allowance of Professional Fees is granted in part and denied in part.

"No-Look" Fees

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $5,000.00. Dkts. 187 and 195. Of this authorized payment, $1,500.00 was paid pre-petition. The debtor's attorney now seeks additional compensation, in the amount of $23,250.00 in fees and costs. The period for which the additional fees are requested is February 27, 2013, through September 30, 2014. This time frame is not exclusively post-confirmation but also includes pre-confirmation work (the plan was confirmed on October 23, 2013, and an amended plan was confirmed on November 18, 2013).

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 246).

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

Applicant asserts that his services were greater than a typical Chapter 13 case. Applicant states that it took 288 days to reach confirmation and that there was extensive, unanticipated work relating to defending the objection to confirmation filed by creditor Hamo. This objection later moved to an adversary proceeding, which required additional work to settle. Applicant charged $300.00 per hour for the 77.50 hours performed (55.0 hours in Chapter 13 and 22.50 hours in the adversary proceeding).

Although the court finds the hourly rates reasonable and that the applicant effectively used appropriate rates for the services provided, it appears that some of the unanticipated work performed was pre-confirmation and necessary to confirm the initial plan. The Guidelines and local rules provide that counsel may request additional compensation for only substantial and unanticipated *post-confirmation* work. Therefore, at most, Applicant may request additional fees for work performed post-confirmation, or after October 23, 2013. Accordingly, fees for work performed pre-confirmation which the court calculates to be $9,840 representing 32.80 hours for the period from February 27, 2013, through September 29, 2013, will be denied. That leaves $6,660 for post-confirmation work and $6,750 for post-petition services related to the adversary proceeding, which are allowed.

3. 14-31612-B-13 STEVEN/LEAH DREW — MOTION TO CONFIRM PLAN
DAO-2 Dale A. Orthner — 2-12-15 [39]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

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

The Motion to Confirm the Amended Plan is granted.

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

4. 12-20015-B-13 ROBERT/VERONICA WARDLOW MOTION TO SELL
MET-6 Mary Ellen Terranella 3-11-15 [88]

CASE DISMISSED 3/27/15. REMOVED FROM CALENDAR. NO APPEARANCE NECESSARY.

5.	15-20915-B-13 JPJ-1	RONALD/URSULA VIVIANI Joseph M. Canning	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-11-15 [27]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtors have filed a written reply to the Trustee's objection.

The court's decision is to continue the Objection to April 29, 2015, and conditionally deny the Motion to Dismiss.

Feasibility of the plan depends on the granting of a motion to value collateral for Bank of America. As stated in Debtors' reply, the motion to value collateral is scheduled to be heard on April 22, 2015. If the motion is unsuccessful, the court may deny confirmation of the plan.

Since the motion to value collateral is scheduled to be heard on April 22, 2015, the Objection is continued to April 29, 2015, after the valuation hearing, 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.

6. 12-25916-B-13 BRIAN SMITH MOTION TO MODIFY PLAN
SLE-1 Steele Lanphier 2-25-15 [27]

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)(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 did not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a), Form Number EDC 3-080-12, the standard form Chapter 13 Plan effective Mary 1, 2012.

Second, the Debtor did not make timely plan payments under the term of the previously confirmed plan, thus causing the Chapter 13 Trustee to lack sufficient funds to pay post-petition contract installments to Wells Fargo Home Mortgage for the months of June 2012 and January 2015. The modified plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Third, the plan terms as stated in the additional provisions of the plan filed February 25, 2015 fail to properly account for the monies the debtor has paid into the plan to date.

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

7.	14-25817-B-13 JPJ-2	SHANE WELLS Bruce Charles Dwiggins	OBJECTION TO CLAIM OF CREDIT MANAGEMENT, LP, CLAIM NUMBER 1-2 2-10-15 [34]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement). 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(b)(1)(A) 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 Objection to Proof of Claim Number 1-2 of Credit Management, LP is sustained and the claim is disallowed in its entirety.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Credit Management ("Creditor"), Proof of Claim No. 1-2 ("Claim") due to the fact that the statute of limitations for collection of this debt has expired. The petition in this Chapter 13 proceeding was filed on May 30, 2014. The Claim was filed by Creditor on June 5, 2014. The documents attached to the Claim show that the last payment on the account was made on October 20, 2009, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. The statute of limitations has expired.

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

8. 15-20217-B-13 MICHAEL/ROSE LARIVIERE MOTION TO CONFIRM PLAN
MET-3 Mary Ellen Terranella 2-24-15 [43]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

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

The Motion to Confirm the Amended Plan is granted.

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

9. 11-38620-B-13 RANDALL/VICKIE TOMLINSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RFM-1 C. Anthony Hughes — 3-5-15 [79]

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

Final Ruling: No appearance at the April 8, 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.

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 1996 Rexhall Rexair, VIN ending in -17198 (the "Vehicle"). The moving party has provided the Declaration of Melanie Helmes ("Helmes Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Helmes Declaration provides testimony that Debtors are due for the November 24, 2014 payment. Debtors have failed to make two (2) post-petition payments, with a total of $789.94 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by the Vehicle is determined to be $5,534.31 and the value of the Vehicle is determined to be $15,150.00, as stated in the Helmes Declaration. However, in Schedules B and D filed by the Debtors, the valuation of the Vehicle is listed as $10,300.00.

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 where 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 and despite the difference in valuation of the Vehicle by the Movant and Debtors, the court determines that there is approximately $4,765.69 to $9,615.69 in equity in the Vehicle; however, neither the Debtor nor the Trustee have alleged or demonstrated that the Vehicle is necessary for an effective reorganization in this Chapter 13 case. 11 U.S.C. § 362(d)(2).

Normally, with this amount of equity, the court would deny relief from the stay because the amount of equity here provides a sufficient equity cushion and, thus, adequate protection. Here, however, because neither the Debtor nor the Trustee have timely opposed this (f)(1) motion and the Movant has established grounds for relief the motion will be granted. The court shall terminate and vacate the automatic stay to allow U.S. Bank, N.A., 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. The 14-day stay of FRBP 4001(a)(3) is NOT waived.

No other or additional relief is granted by the court.

10. 14-30622-B-13 PATRICK SALIMI
PPR-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-6-15 [51]

HSBC BANK USA, N. A. 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion for Relief From the Automatic Stay is granted in part and denied in part.

HSBC Bank USA, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5159 Ridgegate Way, Fair Oaks, California (the "Property"). Movant has provided the Declaration of Shemar Ursin ("Ursin Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ursin Declaration states that there are 3 post-petition defaults, with a total of $6,798.42 in post-petition payments past due, less partial payments of $1,513.86 for a total payment due of $5,284.56.

Opposition has been filed by Patrick Salimi ("Debtor") asserting defective service and that movant failed to show standing for the motion. The Chapter 13 Trustee has filed a non-opposition to the motion. For the reasons explained below, the Debtor's objections are overruled.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $433,534.52 (less attorney's fees and costs of $1,026.00), as stated in the Ursin Declaration. The value of the Property is determined to be $355,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The Debtor's delinquency in payments to the Trustee resulting in the Trustee's inability to pay Movant and the Debtor's failure to take steps to correct its treatment of Movant's claim in an amended plan after the court sustained Movant's earlier objection to confirmation is additional cause for relief from the stay under § 362(d)(1).

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 Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or

showing having been made by the Debtor or the Trustee to the contrary, the court determines that it has not been shown that the Property is necessary for any effective reorganization in this Chapter 13 case.

The court further overrules and rejects the Debtor's defective service argument. The Debtor has responded to the motion and, therefore, is not prejudiced.

The court also overrules and rejects the Debtor's argument that Movant lacks standing to seek relief from the automatic stay. Under § 362(d), a "party in interest" may request relief from the stay. A "party in interest" can include any party that has a pecuniary interest in the matter, that has a practical stake in the resolution of the matter or that is impacted by the automatic stay. *Brown v. Sobczak (In re Sobczak)*, 369 B.R. 512, 517-18 (9th Cir. BAP 2007). Proceedings to decide motions for relief from the automatic stay are very limited. "[A] party seeking relief from stay need only establish that it has a colorable claim to enforce a right against property of the estate." *Cruz v. Stein Strauss Trust #1361 (In re Cruz)*, 516 B.R. 594, 602 (9th Cir. BAP 2014) (quoting *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 914-15 (9th Cir. BAP 2011). A party has a "colorable claim" sufficient to establish standing to prosecute the motion if it has an ownership interest in the subject property. *Id.* at 913; *Edwards v. Wells Fargo Bank, N.A. (In re Edwards)*, 454 B.R. 100, 105 (9th Cir. BAP 2011).

Movant, though its agent, asserts that it is in actual or constructive possession of the underlying promissory note endorsed in blank by the original borrower and it has produced a copy of that note. Movant has also produced a recorded assignment of the deed of trust to Movant which the Debtor does not dispute. Accordingly, the court is persuaded that Movant has made a colorable claim sufficient to support standing to prosecute the motion and seek stay relief. The court notes that the timing of the Debtor's standing argument is highly questionable. The Debtor has not previously objected to Movant's standing in earlier proceedings in this case, i.e., Movant's proof of claim, Movant's objection to confirmation, and payments by the Trustee to Movant.

Based on the foregoing, 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.

Attorney's Fees Requested by Movant and Debtor

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

Similarly, the Debtor's counsel will not be awarded attorney's fees. To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state the court will not approve additional compensation in cases in which no plan is confirmed. In the present case, no plan has been confirmed and Debtor's counsel will not be awarded additional fees.

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

No other or additional relief is granted by the court.

11. 14-30623-B-13 KRISTIN BROWN MOTION TO CONFIRM PLAN
CMO-4 Cara M. O'Neill 2-16-15 [56]
Thru #12

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Motion to Confirm the Second Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). However, the motion is denied as moot based on Debtor's subsequently filed Third Amended Plan on March 6, 2015.

12. 14-30623-B-13 KRISTIN BROWN MOTION TO CONFIRM PLAN
CMO-5 Cara M. O'Neill 3-6-15 [69]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Motion to Confirm the Third Amended Plan has not been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 33-days' notice has been provided. Since service is defective, the Motion to Confirm the Amended Plan is denied without prejudice.

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

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation and Motion to Dismiss, the Objection and Motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

14. 10-44131-B-13 RAPHAEL METZGER AND MELANIE MEDINA-METZGER
PGM-6 Peter G. Macaluso

MOTION TO EXTEND TIME
2-27-15 [227]

Tentative Ruling: The Motion to Extend Time 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 to Extend Time is conditionally denied.

The Debtors' motion is improper. Per the Notice of Default and Application to Dismiss Case filed on January 28, 2015, the Debtors are given 3 options to prevent the dismissal of the case: (1) file a written objection with the court by February 25, 2015 and set it for hearing with at least 14 days notice if the Debtors believe there is no default; (2) admit that there is a default in payments and pay the delinquent amount plus all subsequent payments that are due to the Trustee; or (3) admit there is a default in payments and, within 30 days, file a modified plan and a motion to confirm it. The Debtors have not utilized any of these 3 options as proposed in the Notice.

However, Debtor's reply filed March 31, 2015, states that the motion was filed because debtor Raphael Metzger is or has been overseas and, in any event, the Debtors have provided counsel with confirmation of payment through TSF online payment. The Debtors also assert they will be current at the time this motion is heard.

If the Debtors are current when this motion is heard, the motion will be dismissed as moot. Otherwise, if the Debtors are not current when this motion is heard the motion will be denied.

15. 14-28933-B-13 ANA RODRIGUEZ — CONTINUED MOTION TO DISMISS CASE
JPJ-2 Peter G. Macaluso — 2-26-15 [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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Dismiss is granted and the case is dismissed.

The Debtor has not prosecuted this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). To date, and subsequent to being given 10 days after the March 17, 2015 hearing to file a plan, the Debtor has not taken any further action to confirm a plan in the case.

The Debtor is $2,460.00 delinquent to the Trustee in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Cause exists to dismiss this case. The motion is granted and the case is dismissed.

16.	11-20437-B-13 DBJ-7	GREGORY/ROXANNE ROBERTSON Douglas B. Jacobs	MOTION TO APPROVE LOAN MODIFICATION 3-5-15 [95]

CONTINUED TO 4/13/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

17. 09-40741-B-13 ROBERT/BEVERLY TYSON — MOTION FOR ENTRY OF DISCHARGE
JKF-2 Joseph Feist — 3-11-15 [76]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Motion for Entry of Discharge 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 for Entry of Discharge is granted.

The Debtors have completed form EDC 3-190, which was filed on March 11, 2015. The Debtors are now in compliance with Local Bankr. R. 5009-1. The Chapter 13 Trustee has also filed a non-opposition to the Debtors' motion.

18.	11-46142-B-13 CA-7	MICHAEL/PATRECIA SISTO Michael David Croddy	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 3-25-15 [88]

CONTINUED TO 4/13/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

19. 13-35542-B-13 ANTHONY/RENEE TOKUNO MOTION TO MODIFY PLAN
DJC-2 Diana J. Cavanaugh 3-2-15 [36]

Final Ruling: No appearance at the April 8, 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.

20. 15-20442-B-13 JAMES SISEMORE
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-11-15 [19]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to sustain the Objection.

First, the Debtor failed to appear at the First Meeting of Creditors set for March 4, 2015 as required pursuant to 11 U.S.C. § 343. However, the Trustee has agreed to continue the hearing to April 2, 2015. The Debtor must be thoroughly examined under oath prior to confirmation of a plan.

Second, the Debtor has failed to file a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). The exemptions under California Code of Civil Procedure § 703.140(b) are only applicable if both the husband and wife effectively waive, in writing, the right to claim, during the period that this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under California Code of Civil Procedure § 703.140(b).

Third, the Debtor has not provided the Trustee with copies of certain items including, but not limited to, bank account statements for the 6-month period prior to the filing of the petition and proof of all required insurance. The Trustee is unable to determine if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fourth, the Debtor did not disclose his two prior bankruptcies in his petition.

Fifth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

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.	15-21544-B-13 SNM-1	MARCO MARTINEZ Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 3-4-15 [10]

CONTINUED TO 4/13/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

22. 14-26647-B-13 RONALD/KELLY BRIGGS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 James L. Brunello — 3-2-15 [127]

MUFG UNION BANK, N.A. VS.

Final Ruling: No appearance at the April 8, 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.

MUFG Union Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1024 Wallace Road, Placerville, California (the "Property"). Movant has provided the Declaration of Christopher Johnson ("Johnson Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Johnson Declaration states that there are 7 post-petition defaults, with a total of $41,640.52 in post-petition payments past due. Additionally, there are 30 pre-petition payments in default, with a total of $197,651.68 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $1,232,636.83, as stated in the Johnson Declaration. The value of the Property is determined to be $1,600,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). As additional cause, the court notes that the Debtors failed to file an adversary proceeding within 45 days of the court's Order to Show Cause (Dkt. 118), which was by April 2, 2015. To date, this adversary proceeding has not been filed. As a result, the Debtors may be ineligible for Chapter 13 relief because their secured debts exceed the statutory cap of 11 U.S.C. § 109(e).

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 approximately $367,363.17 in equity in the Property. However, neither the Debtors nor the Trustee have demonstrated that the Property is necessary for an effective reorganization in this Chapter 13 case. 11 U.S.C. § 362(d)(2) insofar as neither filed a timely opposition to this properly-noticed (f)(1) motion.

The court shall terminate and vacate the automatic stay to allow MUFG Union Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Property, 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 opposition to the request to waive the 14-day stay of FRBP 4001(a)(3), the stay shall be waived.

No other or additional relief is granted by the court.

23. 15-21749-B-13 RICHARD DICKSON
SC-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-15 [13]

PARKVIEW EDGE PROPERTIES, LLC VS.

CASE DISMISSED 3/16/15. REMOVED FROM CALENDAR. NO APPEARANCE NECESSARY.

24. 14-32352-B-13 CORY/SIOUX ENOS — MOTION TO VALUE COLLATERAL OF GREEN TREE
JME-1 Steele Lanphier — 3-11-15 [25]

Final Ruling: No appearance at the April 8, 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 Green Tree ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Cory Enos and Sioux Enos ("Debtors") to value the secured claim of Green Tree ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6873 Buena Terra Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $271,337.00 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.

The first deed of trust secures a claim with a balance of approximately $301,557.43. Creditor's second deed of trust secures a claim with a balance of approximately $64,834.29. 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.

25. 14-30753-B-13 MERLYN BRADY
ADR-1 Justin K. Kuney

MOTION TO CONFIRM PLAN
2-26-15 [32]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Motion to Confirm the Amended Plan has been not been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 41-days' notice has been provided. As such, the Motion to Confirm the Amended Plan is denied without prejudice due to defective service.

26. 14-32457-B-13 JIMMY HAASE
CAH-1 Oliver Greene

MOTION TO VALUE COLLATERAL OF WILMINGTON TRUST, NATIONAL ASSOCIATION
2-27-15 [23]

Tentative Ruling: The Motion to Value 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 to Value secured claim of Wilimington Trust, N.A. ("Creditor") is continued for 60 days and will be heard on June 10, 2015.

The Motion to Value filed by Jimmy Haase ("Debtor") to value the secured claim of Wilimington Trust, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1121 El Margarita Road, Yuba City, California ("Property"). Debtor seeks to value the Property at a fair market value of $146,000.00 as of the petition filing date. This valuation has been provided by real estate appraiser James A. Chaussee (Dkt. 27, pp. 3-20). 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.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed on by or on behalf of Wilimington Trust, N.A. as of the date of the filing of Debtor's motion.

Opposition

Wilimington Trust, N.A. opposes Debtor's valuation of the property and requests for at least 60 days to allow it to conduct and obtain a verified appraisal on the Property.

Creditor notes that Debtor's last broker's price opinion obtained for the subject property in December 22, 2014, showed a valuation of a low of $203,300.00 and a high of $224,700.00. Since the value of the Property is the critical issue, the Creditor requests an opportunity to obtain a verified appraisal of the Property.

Discussion

The first deed of trust secures a claim with a balance of approximately $150,271.00. Creditor's second deed of trust secures a claim with a balance of approximately $45,868.00. However, since the valuation of the Property is in dispute, the court cannot yet determine whether Creditor's claim secured by a junior deed of trust is completely or partially under-collateralized. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is continued for 60 days and will be heard on June 10, 2015 to provide Wilimington Trust, N.A. an opportunity to obtain a verified appraisal of the Property.

27. 14-28959-B-13 KAY MILLER — MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie — 2-18-15 [20]

Final Ruling: No appearance at the April 8, 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.

28. 14-27661-B-13 MICHAEL/JURHEE POLLARD MOTION TO INCUR DEBT
CA-4 3-25-15 [43]

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 Incur Debt is denied.

Debtors' motion seeking permission to purchase a 2013 Toyota Camry LE is identical to that filed earlier on March 4, 2015 (Dkt. 33), which this court denied on March 25, 2015 (Dkt. 42). The court still finds that the proposed credit, based on the unique facts and circumstances of this case, is unreasonable. Therefore, the motion is denied.

29. 14-32162-B-13 WILLIAM HENSON
Bruce Charles Dwiggins

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
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 arrearage in the amount of $659.22 related to an advance for taxes. This matter was continued from March 25, 2015, to provide the Debtor and Creditor additional time to reach an agreement. There have been no new developments in the 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.

30. 11-23463-B-13 SIDNEY/LINDA BUNCH
JHW-1 Oliver Greene

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-25-15 [73]

TD AUTO FINANCE, LLC 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion for Relief From the Automatic Stay is granted.

TD Auto Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Dodge Grand Caravan, VIN ending in -625451 (the "Vehicle"). The moving party has provided the Declaration of Uri Cohen ("Cohen Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Movant asserts that it is owed $3,023.82 in insurance proceeds due to the Vehicle's involvement in a collision on January 28, 2015.

In response to the Movant, Chapter 13 Trustee Jan P. Johnson states that checks were mailed to the Movant in the amounts of $3,068.10 and $12.14 on February 26, 2015. As of March 25, 2015, those checks were not yet cashed. According to the Trustee's records, the Movant's secured claim has been paid in full. The motion for relief from automatic stay is granted as to insurance proceeds.

31. 14-25477-B-13 TERRI BANKS MOTION TO INCUR DEBT
PLC-7 Peter L. Cianchetta 3-19-15 [78]

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 Incur Debt is granted.

The motion seeks permission to purchase a 2013 Kia Sorento, the total purchase price of which is $26,602.03, with monthly payments of $586.39.

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

The court finds that the proposed credit, based on the circumstances of this case and Schedules I and J, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

32. 15-20777-B-13 ELIZABETH HUBER
JPJ-1 Gerald B. Glazer

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-11-15 [28]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Debtor has not provided proof of her social security number to the Trustee at the Meeting of Creditors as required under Fed. R. Bankr. P. 4002 (b)(1)(B).

Second, feasibility depends on the granting of a motion to value collateral for Beneficial. The Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

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.

33. 11-30378-B-13 LARNEL/CARRIANNO SAULSBERRY
EJS-2 Eric John Schwab

MOTION TO APPROVE LOAN MODIFICATION
3-9-15 [42]

Final Ruling: No appearance at the April 8, 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 Larnel Saulsberry and Carrianno Saulsberry ("Debtors") seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $3,074.37 a month to $1,203.49 a month commencing February 1, 2015. The payment includes monthly escrow charges of $431.74 per month. The new principal balance will be $361,796.52, of which $54,946.52 is eligible for forgiveness. The term of the loan has been extended and the new maturity date will be May 1, 2037.

The Motion is supported by the Declaration of Larnel Saulsberry and Carrianno Saulsberry. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtors' ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

34. 14-26280-B-13 LUS AGUILERA
JPJ-1 Richard L. Jare

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
2-10-15 [21]

Thru #35

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement). 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(b)(1)(A) 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 Objection to Proof of Claim Number 1-5 of Cavalry SPV I, LLC is sustained and the claim is disallowed in its entirety.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 1-5 ("Claim"). The Claim is asserted to be unsecured in the amount of $113.50. Objector asserts that the statute of limitations for collection of this debt has expired. The petition in this Chapter 13 proceeding was filed on June 13, 2014 and the proof of claim was filed by Creditor on June 17, 2014. The documents attached to the proof of claim show that the last payment on account was made on February 7, 2005, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. The statute of limitations has expired.

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

35. 14-26280-B-13 LUS AGUILERA
JPJ-2 Richard L. Jare

OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 6
2-10-15 [25]

Final Ruling: No appearance at the April 8, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement). 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(b)(1)(A)

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 Objection to Proof of Claim Number 6-1 of Capital Systems, LLC is sustained and the claim is disallowed in its entirety.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Capital Systems, LLC ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $625.21. Objector asserts that the statute of limitations for collection of this debt has expired. The petition in this Chapter 13 proceeding was filed on June 13, 2014 and the proof of claim was filed by Creditor on September 24, 2015 The documents attached to the proof of claim show that the last payment on account was made on March 14, 2003, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. The statute of limitations has expired.

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

36. 14-27181-B-13 DONALD TAGGART
FF-2 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
3-3-15 [64]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to sustain the Objection.

First, the Debtor's plan understates the pre-petition arrearage owed to JPMorgan Chase Bank, N.A. The Debtor's plan does not provide for the cure of the full amount of pre-petition default owed and therefore does not satisfy 11 U.S.C. § 1322(b)(5) or § 1325(a)(5).

Second, the Debtor's repayment of JPMorgan's arrears is based on a prospective sale of his rental property. Debtor has not filed a motion to sell the rental property not provided evidence of prospective buyers or a purchase price. Thus, it cannot be ascertained whether the sale of the property will result in funds sufficient to pay all of JPMorgan's arrears.

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.

37. 11-25082-B-13 DWAINE/TONI MELTON
BLG-3 Bruce Charles Dwiggins

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR BRUCE C. DWIGGINS, DEBTORS ATTORNEY(S)
3-4-15 [82]

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

The Motion for Allowance of Professional Fees is granted.

Bruce C. Dwiggins ("Applicant"), the attorney to Chapter 13 Debtor Dwaine Melton and Toni Melton ("Clients"), makes the first and final request for the allowance of $1,942.00 in additional fees and $61.42 in additional expenses. The period for which the additional fees are requested is October 13, 2014, through March 2, 2015. This time frame is post-confirmation work after the first plan was confirmed nearly three years prior on October 19, 2011.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 246).

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

The court finds the hourly rates reasonable and that the applicant effectively used appropriate rates for the services provided. Additionally, the work that Applicant performed was substantial and unanticipated as it related to the passing of Joint Debtor's Husband (who was the Debtor in this case) on October 10, 2014, and Joint Debtor's receipt of a life insurance payout, part of which was used to pay off her case. Accordingly, the motion for additional professional fees is granted.

38. 15-20788-B-13 DANIEL MIRANDA
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE 3-18-15 [20]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection.

First, the claim of Ocwen is misclassified as a Class 1 claim. According to the Additional Provisions of the Plan filed February 2, 2015, the creditor will not receive ongoing monthly contractual payments, but will receive and "adequate protection" payment of $1,000.00 per month pending the approval of a loan modification. The claim is not a Class 1 claim in substance because it is not a claim that will, in accordance with 11 U.S.C. § 1322(b)(5), receive ongoing monthly contractual payments. Because the Additional Provisions state that the creditor will receive "adequate protection" payments instead of the ongoing monthly contractual payments, the plan modifies the claim, which is impermissible under 11 U.S.C. § 1322(b)(2) and § 1324(a)(1).

Second, the plan filed February 2, 2015 does not comply with 11 U.S.C. § 1322(b)(2) because the plan proposes an impermissible modification of the secured claim of Ocwen, the holder of the first deed of trust on the Debtor's principal residence.

Third, the Debtor has failed to file a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 793.140(a)(2). The exemptions provided under California Code of Civil Procedure § 703.140(b) are only applicable if both the husband and wife effectively waive in writing, the right to claim, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under California Code of Civil Procedure § 703.140(b).

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

39. 15-20896-B-13 MICHAEL/SUSAN FARMER
JPJ-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-11-15 [21]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

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 set for March 5, 2015 as required under 11 U.S.C. § 343.

Second, the plan 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 Trustee calculates that the Debtors' correct monthly disposable income is or should be $1,343.06 and the Debtors must pay no less than $80,583.60 to general unsecured creditors. The Debtors proposed 30% to be paid to unsecured creditors, but the Trustee calculates that the plan will pay a dividend of 46.4%, or approximately $62,646.14

Third, the plan does not specify a selection as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and servicing a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

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 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.