UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 10, 2018 at 1:00 p.m.

1.	15-25402-B-13 MET-3	THEA ELVIN Mary Ellen Terranella	MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S) 3-18-18 [68]

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Mary Ellen Terranella ("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 $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 33. Applicant now seeks additional compensation in the amount of $4,322.50 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkts. 68, 71.

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

Applicant asserts that she provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would short sale her home after originally intending to retain her home when she had filed the case. The Debtor even filed a motion to value collateral to strip off the second mortgage at the completion of the plan. However, the first mortgage was an interest-only loan, scheduled to begin amortization in May 2017. The mortgage payments would have increased by over $1,300.00 per month, which the Debtor could not afford. Applicant states that she performed 20.00 hours of substantial, unanticipated post-confirmation work related to the short

sale of Debtor's home. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

The court will enter an appropriate minute order.

2. 17-27707-B-13 ANTHONY SIPPIO MOTION TO CONFIRM PLAN
LBG-4 Lucas B. Garcia 2-21-18 [63]

Tentative Ruling: The Motion to Confirm First Amended Plan Dated February 21, 2018, 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan will take approximately 74 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the first amended plan fails to specify a cure of the post-petition arrearage owed to Wells Fargo Bank, N.A. in Class 1 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is unable to fully comply with § 3.07 of the plan.

Third, the plan payment in the amount of $4,350.00 (for months 2-6) and $4,850.00 (for months 7-60) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, and monthly dividends payable on account of Class 1 arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $4,622.90 (for month 2), $4,822.90 (for months 3 and 4), $5,056.11 (for months 4 and 6), and $5,106.11 (for months 7-60). The plan does not comply with Section 5.2 of the mandatory form plan.

Fourth, the Debtor still has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. This issue was raised in the court's civil minute order, dkt. 53. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fifth, according to Schedule J, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor still has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). This issue was raised in the court's civil minute order, dkt. 53. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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

The court will enter an appropriate minute order.

3. 18-20026-B-13 BRIAN SHAW MOTION TO MODIFY PLAN
PLC-1 Peter L. Cianchetta 3-2-18 [25]

Final Ruling: No appearance at the April 20, 2018, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 2, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

4.	17-27127-B-13 JPJ-1	SHERWIN BRAMLETT Peter G. Macaluso	OBJECTION TO CLAIM OF PALISADES ACQUISITION XVII, CLAIM NUMBER 3 2-7-18 [74]

Final Ruling: No appearance at the April 10, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 3-1 of Palisades Acquisition XVII and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Palisades Acquisition XVII ("Creditor"), Claim No. 3-1. The claim is asserted to be unsecured in the amount of $1,255.81. Documents attached to the proof of claim show that the account is a credit card account. Objector asserts that a statement with all the below information was not filed with the proof of claim as required pursuant to Fed. R. Bankr. P. 3001(c)(3)(A):

> The name of the entity from whom the creditor purchased the account;
>
> The name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
>
> The date of an account holder's last transaction;
>
> The date of the last payment on the account; and
>
> The date on which the account was charged to profit and loss.

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). 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). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim is not accompanied with a statement of required information as necessary under Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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.

The court will enter an appropriate minute order.

5. 17-27458-B-13 CARMEN HALAMANDARIS MOTION TO CONFIRM PLAN
MOT-1 T. Mark O'Toole 3-1-18 [44]

Final Ruling: No appearance at the April 10, 2018, hearing is required.

The Motion to Confirm Amended Chapter 13 Plan was not 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 40-days' notice was given. The motion is denied.

The court will enter an appropriate minute order.

6. 17-22076-B-13 DAVID/YOLANDA JONES — MOTION TO APPROVE LOAN MODIFICATION
BLG-2 Chad M. Johnson — 3-12-18 [40]

Final Ruling: No appearance at the April 10, 2018, hearing is required.

The Motion for Permission to Obtain Financing 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny without prejudice the motion to incur post-petition debt.

The motion seeks permission to acquire a parent student loan to aid son, David Jones, Jr., in his college educational expense. The loan is a parent loan and Debtor David Jones will be the borrower. The loan is through the U.S. Department of Education, William D. Ford Federal Direct Loan Program. The loan amount is $13,758.00 and payments are asserted to be $100.00 per month to commence 6 months from the time the loan is submitted to the lender. Debtors assert that they have adjusted their expenses by cutting their budget for recreation, clothing, and personal care and will be able to continue making their plan payments. Debtors are in month 12 of their plan and state that they are current on plan payments.

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 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 does not provide all material provisions as required by Rule 4001(c). Although Exhibit A, dkt. 43, shows an interest rate of 4.264% and borrowing limit of $13,758.00, no other material provisions are provided. For example, Exhibit A does not state that monthly payments will be $100.00 per month. It also appears that the Direct Loans Disclosure Statement at Exhibit A includes a second page that provides "information . . . explained in detail on the back." That back page is not included.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

7. 17-23780-B-13 MELANIE PAULY MONTERROSA MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 2-28-18 [112]

Tentative Ruling: The Motion for Order Confirming Debtor's First Modified Chapter 13 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)(B) 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 matter will be determined at the scheduled hearing.

First, the Trustee objects to confirmation on grounds that the plan filed February 28, 2018, does not property account for all payments the Debtor has paid to the Trustee to date in the amount of $18,250.00. The Debtor agrees with the Trustee that the appropriate payments can be included in an order confirming.

Second, the Trustee objects to confirmation on grounds that the post-petition mortgage arrears through February 28, 2018, is actually $3,470.00 and not $6,095.49 as listed in Section 7.02 of the Nonstandard Provisions. The Debtor agrees with the Trustee that the correct arrear amount can be included in an order confirming.

Third, while both the Trustee and Debtor agree that plan payment in the amount of $3,050.00 (for months 10-20) and plan payments in the amount of $4,660.00 (for months 21-60) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims, they disagree as to the correct amount.

The Trustee asserts that the aggregate of the monthly amounts plus the Trustee's fee is $3,126.00 for months 10-20, and $4,817.00 for months 21-60. On the other hand, the Debtor asserts that the aggregate of the monthly amounts plus the Trustee's fee is $3,084.00 for months 10-20, and $4,756.00 for months 21-60.

The matter will be determined at the scheduled hearing.

8. 17-26493-B-13 DAVID LANE MOTION TO CONFIRM PLAN
DEF-8 David Foyil 2-20-18 [94]

Final Ruling: No appearance at the April 10, 2018, hearing is required.

The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 20, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

9. 18-21293-B-13 JWC-1 — ASHISH ARYA, Pro Se — MOTION FOR RELIEF FROM AUTOMATIC STAY, 3-13-18 [7]

VSD HOLDCO 2 LLC VS.

Final Ruling: No appearance at the April 10, 2018, hearing is required.

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

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

VSD HoldCo 2 LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4308 Live Oak Lane, Rocklin, California (the "Property"). Movant has provided the Declaration of Amber Sefert to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Sefert Declaration states that there is a post-petition default of $5,722.13 and a pre-petition default of $177,179.99. The court notes that these defaults differ from those listed in the Relief from Stay Summary Sheet at dkt. 12. The Relief from Stay Summary Sheet lists a post-petition default of $5,990.93 and a pre-petition default of $167,730.00.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $645,198.44 as supported by Movant's exhibits. *See* exh. 5, dkt. 11. The value of the Property is determined to be $394,648.00 as stated in Schedules A and D filed by Debtor.

Discussion

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

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, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

10. 18-20400-B-13 IRMA BANUELOS
JPJ-1 Richard L. Jare

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-6-18 [15]

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

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

First, the plan understates the amount entitled to priority to the Internal Revenue Service. Utilizing the amount entitled to priority in Claim No. 2 filed by the IRS, the plan will take approximately 109 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the meeting of creditor's was held open to allow Debtor to file his last 4 years of tax returns pursuant to 11 U.S.C. § 1308 and provide the Trustee with copies. The meeting of creditors was held on April 5, 2018, and concluded as to Debtor.

For the first reason stated above, the plan filed January 24, 2018, 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.

The court will enter an appropriate minute order.

11. 18-20562-B-13 JANN CO
CCH-1 Mikalah R. Liviakis

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY UNITED SECURITY FINANCIAL CORP.
3-8-18 [14]

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

The court's decision is to overrule the objection as moot.

An order confirming was signed and entered on April 4, 2018, resolving the objection filed by United Security Financial Corp.

The court will enter an appropriate minute order.

12. 16-25470-B-13 MICHAEL HANKS CONTINUED MOTION TO MODIFY PLAN
MET-5 Mary Ellen Terranella 2-8-18 [79]

Tentative Ruling: The Motion to Modify Plan After Confirmation 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided Debtor is current at the time of the hearing.

Chapter 13 Trustee objects to confirmation on grounds that the debtor is delinquent in the amount of $2,848.00 representing approximately 1 plan payment, that an additional plan payment in the amount of $2,850.00 will be due before the date of this hearing, and that Section 3.06 of the plan specifies a monthly payment of $0.00 for administrative expenses.

Debtor filed a response stating that it had overnighted funds in the amount of $13,194.00 to the Trustee on March 27, 2018. The funds are from the sale proceeds of Debtor's mother-in-law's mobile home that had closed the week of March 10, 2018. These funds will bring the Debtor's plan current through March 2018.

Additionally, Debtor states that attorney's fees under Section 3.06 will be paid in the amount of $390.00 per month and shall be provided for in the order confirming.

Provided Debtor is current at the time of the hearing, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. 18-20699-B-13 ARVIS CURRY
JPJ-1 Mohammad M. Mokarram

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-12-18 [13]

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

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

The meeting of creditor's was held open to allow Debtor to file his 2016 tax return pursuant to 11 U.S.C. § 1308 and provide the Trustee with copies. The meeting of creditors was held on April 5, 2018, and concluded as to Debtor.

Provided that the Trustee has had an opportunity to review the Debtor's tax returns and that the plan is feasible and proposed in good faith, the plan filed February 8, 2018, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

The court will enter an appropriate minute order.

14. 18-21272-B-13 STEPHEN/LESLY SAWYER
NSV-1 Nima S. Vokshori

MOTION TO IMPOSE AUTOMATIC STAY AND/OR MOTION TO EXTEND AUTOMATIC STAY O.S.T. 4-3-18 [15]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. 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 court's decision is to grant the motion to extend automatic stay.

Debtors seek 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on November 7, 2017, due to delinquency in plan payments (case no. 16-23186, dkts. 38, 39). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

The Debtors state that they are retired and live only on Social Security. They assert that they fell behind on plan payments in late-2017 because they had unforeseen expenses including an automobile brake replacement, medical expenses related to both of their surgeries, and veterinary bills for their three dogs. Debtors state that they will be able to fulfill their duties in this bankruptcy case because their Social Security increased this year and they are more able to afford the regular ongoing plan payments. Debtors state that they filed for bankruptcy in an effort to save their home from foreclosure.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court will enter an appropriate minute order.