

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 11, 2017 at 1:00 p.m.

1. [17-20707](#)-B-13 ROGER GREER OBJECTION TO CONFIRMATION OF
JPJ-1 Seth L. Hanson PLAN BY JAN P. JOHNSON
Thru #2 3-22-17 [[18](#)]

CONTINUED TO 4/25/17 AT 1:00 P.M. IN ORDER TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 4/20/17.

Final Ruling: No appearance at the April 11, 2017, hearing is required. The court will enter an appropriate minute order.

2. [17-20707](#)-B-13 ROGER GREER OBJECTION TO CONFIRMATION OF
MJ-1 Seth L. Hanson PLAN BY JPMORGAN CHASE BANK,
N.A.
3-23-17 [[21](#)]

CONTINUED TO 4/25/17 AT 1:00 P.M. IN ORDER TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 4/20/17.

Final Ruling: No appearance at the April 11, 2017, hearing is required. The court will enter an appropriate minute order.

3. [17-20515](#)-B-13 SHIU NATH OBJECTION TO CONFIRMATION OF
JPJ-1 Pro Se PLAN BY JAN P. JOHNSON AND/OR
Thru #4 MOTION TO DISMISS CASE
3-22-17 [[21](#)]

CONTINUED TO 4/25/17 AT 1:00 P.M. IN ORDER TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 4/20/17.

Final Ruling: No appearance at the April 11, 2017, hearing is required. The court will enter an appropriate minute order.

4. [17-20515](#)-B-13 SHIU NATH AMENDED OBJECTION TO
RCO-1 Pro Se CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
3-28-17 [[25](#)]

CONTINUED TO 4/25/17 AT 1:00 P.M. IN ORDER TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SCHEDULED FOR 4/20/17.

Final Ruling: No appearance at the April 11, 2017, hearing is required. The court will enter an appropriate minute order.

5. [16-23416](#)-B-13 KHANH DAN HUYNH MOTION TO INCUR DEBT
JTN-3 Jasmin T. Nguyen 2-25-17 [[68](#)]

Thru #6

Final Ruling: No appearance at the April 11, 2017, hearing is required.

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase a preowned 2013 Lexus ES350, the total purchase price of which is \$25,882.60, with monthly payments of \$318.71.

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 unique facts and circumstances of this case, is reasonable. The monthly payments made by the Debtor on the new auto loan is approximately \$16.00 higher than what the Debtor had been paying on his previous auto loan for a 2014 Honda Odyssey, which sustained a total loss following a car accident. Because the payments will extend beyond the Chapter 13 plan, the new auto loan shall be a Class 4 claim to be paid outside the plan. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

6. [16-23416](#)-B-13 KHANH DAN HUYNH MOTION TO MODIFY PLAN
JTN-4 Jasmin T. Nguyen 2-25-17 [[72](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

The Motion to Confirm First Modified 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)(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

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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 February 25, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

7. [16-28029](#)-B-13 BEVERLY UPCHURCH-ROBINSON AMENDED MOTION TO CONFIRM PLAN
Pro Se 2-16-17 [[37](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

The 1st Amended Motion to Confirm Debtor's 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). However, it appears that there was insufficient service of process on creditors Aarons Sales and Lease and Capital One Auto Finance. The address used by the Debtor for those creditors does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

8. [15-25534](#)-B-13 LAWRENCE/KAPRICE CRAWFORD MOTION TO APPROVE LOAN
PGM-4 Peter G. Macaluso MODIFICATION
Thru #9 3-14-17 [[108](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

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

The court's decision is to permit the loan modification requested.

Debtors seek 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 Debtors' mortgage payment from the current \$1,956.96 a month as stated in the confirmed plan filed June 15, 2016, to \$1,886.60 a month. The modified principal balance will include all amounts and arrearages that will be past due as of the modification date less any amount paid to the lender but not previously credited to the Debtors' loan. As of the modification effective date, the principal balance of the loan that will be due and payable is \$295,005.00. Debtors understand that by agreeing to add any unpaid amounts to the outstanding principal balance that the added unpaid amounts accrue interest based on the interest rate in effect under the loan modification. The interest rate of 3.00% began to accrue on the new principal balance as of January 1, 2017. The maturity date is December 1, 2036.

The motion is supported by the Declaration of Lawrence Crawford and Kaprice Crawford. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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

The court will enter an appropriate minute order.

9. [15-25534](#)-B-13 LAWRENCE/KAPRICE CRAWFORD MOTION FOR COMPENSATION FOR
PGM-5 Peter G. Macaluso PETER G. MACALUSO, DEBTORS'
ATTORNEY
3-14-17 [[114](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

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). Further, because the court will not materially alter the relief requested

by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

FEES AND COSTS REQUESTED

Peter Macaluso ("Applicant"), the attorney to Chapter 13 Debtors, makes a request for the allowance of \$1,500.00 in fees and \$0.00 in expenses. The period for which the fees are requested is for June 1, 2016 through March 14, 2017. The order of the court approving substitution of Applicant was entered on April 12, 2016. Dkt. 64.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 117.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a) (3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (4) (A). The court may award interim fees for professionals pursuant

to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. Debtors had sought to reconvert their case from a Chapter 7 to a Chapter 13, had paid \$1,000.00 to Applicant for the conversion and work done in the Chapter 7 only, and had agreed to a billing rate of \$300.00 per hour for Applicant's representation in the reconverted Chapter 13 bankruptcy. The court finds the services were beneficial to the Debtors and bankruptcy estate and reasonable.

The court does not award fees for "anticipated" services to be performed in the future. However, the court recognizes that the Applicant's request for \$1,500.00 represents a reduced amount of fees. The actual services provided by the Applicant totaled \$2,760.00 from 9.20 hours at a billing rate of \$300.00.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,500.00
Costs and Expenses	\$ 0.00

The court will enter an appropriate minute order.

10. [17-20741](#)-B-13 JOSE RIOS
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-22-17 [[16](#)]

CONTINUED TO 4/25/17 AT 1:00 P.M. IN ORDER TO BE HEARD AFTER THE CONTINUED
MEETING OF CREDITORS SCHEDULED FOR 4/20/17.

Final Ruling: No appearance at the April 11, 2017, hearing is required. The court will
enter an appropriate minute order.

11. [11-37057](#)-B-13 JOHN/NIMAT GRANTHAM
RLG-5 Robert T. Goldstein

MOTION TO AVOID LIEN OF
NATIONAL CITY MORTGAGE
2-22-17 [[88](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the second deed of trust of PNC Bank ("Creditor") against the Debtors' property commonly known as 820 Wainwright Street, Benicia, California ("Property").

A debtor who seeks to avoid a second deed of trust in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). *See Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's deed of trust remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the Creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. *See also* 11 U.S.C. § 1325(a)(5)(B)(I).

The court will enter an appropriate minute order.

12. [16-28259](#)-B-13 PAULA BOYD
JPJ-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
3-22-17 [[41](#)]

Tentative Ruling: The Trustee'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 sustain the objection and deny confirmation of the plan.

First, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, the Debtor has not amended Line #18 of her Statement of Financial Affairs to include the transfer of a non-operational 2001 Toyota RAV4 to her daughter. The Debtor has not cooperated with the Trustee to enable the Trustee to perform his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed February 9, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

13. [16-20568](#)-B-13 NATALIE PELTON
RJ-4 Richard L. Jare

MOTION TO MODIFY PLAN
2-24-17 [[64](#)]

Final Ruling: No appearance at the April 11, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation 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'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 April 11, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

14. [17-21871](#)-B-13 BRUCE SMITH
CPG-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-27-17 [[9](#)]

EJ VENTURES, LLC VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Stay by Unsecured Creditor EJ Ventures, LLC is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

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

EJ Ventures, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8158 Derby Park Court, Sacramento, California (the "Property"). Movant has provided the Declaration of Ionita Aldea to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on February 24, 2017. Exh. 1, Dkt. 13. Movant seeks to proceed with the unlawful detainer action filed in state court on March 13, 2017.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on March 13, 2017, with a Notice to Quit served on February 24, 2017. Dkts. 11, 13. A judgment for possession was entered against the Debtor in the state court unlawful detainer action on March 13, 2017.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. 1, Dkt. 13. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate and because the Debtor has no right to be in possession, the Property is not necessary for an effective reorganization of the Debtor. The Debtor's post-foreclosure and part unlawful detainer judgment possession is also cause under 11 U.S.C. § 362(d)(1).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

15. [16-22377](#)-B-13 PRISCILLA MCMANUS
DCN-3 Mary D. Anderson

MOTION TO MODIFY PLAN
3-2-17 [[48](#)]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated March 2, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The plan cannot be effectively administered. The modified plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend due to Nationstar Mortgage, LLC for the months of November 2016, January 2017, and February 2017.

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

The court will enter an appropriate minute order.

Tentative Ruling: The Motion to Approve the [3rd Amended] Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Chapter 13 Trustee objects to confirmation on grounds that the plan understates the total amount of Class 7 unsecured non-priority claims and that payment of 100% to these creditors would take approximately 93 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). The Trustee also objects to confirmation because the payment terms of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses and it would not be possible to pay the balance of the Debtor's attorney's fees of \$2,500.00 and other administrative expenses.

The Debtor has filed a response stating that the previously proposed dividend of 100% to Class 7 unsecured non-priority creditors was an error and that the plan proposes a dividend of 79%. This amount is greater than the amount unsecured creditors would receive in a Chapter 7 proceeding, which would be 0%. Debtor also proposes a monthly administrative fee of \$250.00 per month for Section 2.07.

Provided that the objections are resolved, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

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

Tentative Ruling: Motion to Sell Property was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The matter was continued from March 28, 2017, in order for Wells Fargo Home Mortgage and Wells Fargo Bank, N.A. to review the terms of the sale as to the new buyer of the subject real property located at 35 Willotta Drive, Fairfield, California ("Property"), and was again continued from April 4, 2017.

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

The court will enter an appropriate minute order.