UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 15, 2015 at 10:00 a.m.

1.	13-29606-B-13 DRE-6	MARIA AVINA AND GUILLERMO AVINA-SEGURA D. Randall Ensminger	MOTION TO MODIFY PLAN 3-14-15 [202]

Final Ruling: No appearance at the April 15, 2015 hearing is required. CASE DISMISSED 3/19/15

2.	12-22808-B-13 SDB-2	JACKIE COVEY W. Scott de Bie	MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. AFS CITIBANK, N.A. 3-16-15 [38]

Final Ruling: No appearance at the April 15, 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 Citibank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Jackie Covey ("Debtor") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 299 Shasta Drive, Unit 16, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 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 $223,999.23. Creditor's second deed of trust secures a claim with a balance of approximately $36,596.84. 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.

3. 14-29108-B-13 ROSEMARIE LANDRY MOTION TO MODIFY PLAN
MOH-5 Michael O'Dowd Hays 2-26-15 [63]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

The Motion to Confirm the Modified 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.

4. 12-41021-B-13 ARLISA PARISH MOTION TO MODIFY PLAN
WW-4 Mark A. Wolff 2-27-15 [137]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

The Motion to Confirm the Modified 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.

5.	15-22024-B-13 MS-1	TOBY/GERALDINE HALL Mark Shmorgon	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 3-16-15 [10]

Final Ruling: No appearance at the April 15, 2015 hearing is required. CONTINUED TO 4/20/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

6. 14-25625-B-13 DOUGLAS THURSTON
CK-05 Pro Se

MOTION TO AVOID LIEN OF SHEILA FOLEY GILDEA
3-28-15 [59]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Shila Foley Gildea ("Creditor") against property of Douglas Thurston ("Debtor") commonly known as 19290 Eighmy Road, Cottonwood, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $52,866.00. An abstract of judgment was recorded with Tehama County on April 2, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $355,000.00 as of the date of the petition. The unavoidable consensual liens total $361,232.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

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

7. 15-20232-B-13 JASON NGUYEN
PP-1 Thomas L. Amberg
Thru #10

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY UNIVERSITY NATIONAL BANK
2-23-15 [22]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to overrule the Objection.

First, Jason Nguyen ("Debtor") has gained employment and filed an amended Schedule I and J (Dkt. 52). The Debtor's budget shows a surplus of $3,845.00 per month.

Second, the Debtor is current on all payments that are currently due.

Third, the court has sustained D's objection to the Kansas Department of Revenue claims, which addresses feasibility issues.

The Objection is overruled.

8. 15-20232-B-13 JASON NGUYEN
PP-2 Thomas L. Amberg

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-13-15 [39]

UNIVERSITY NATIONAL BANK 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.

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 denied without prejudice.

University National Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1424 Monterey Hill Drive, Lawrence, Kansas (the "Property"). Movant has provided the Declaration of Justin Sparks ("Sparks Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

There are 2 post-petition defaults, with a total of $3,866.00 in post-petition payments past due. Additionally, there are 6 pre-petition payments in default, with a total of $11,598.00 in pre-petition payments past due. The Movant asserts that it is owed a total of $198,776.39.

From the evidence provided, the value of the Property is determined to be $209,000.00,

as stated in Schedules A and D filed by Debtor and agreed upon in the Sparks Declaration.

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). Although Debtor has missed two (2) post-petition payments, Debtor's proposed plan states that Movant will be paid 100%.

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). The burden in this case would not shift to the Debtor because there appears to be equity in the property.

The court shall not issue an order terminating and vacating the automatic stay.

9. 15-20232-B-13 JASON NGUYEN — MOTION TO DISMISS CASE
PP-3 Thomas L. Amberg — 3-13-15 [45]

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

The Motion to Dismiss is denied without prejudice.

However, Debtor has a pending plan in front of the court (Item #7) that proposes to pay the Creditor's claim in full. Additionally, Debtor is current under the plan that has been proposed.

Cause does not exist to dismiss this case. The motion is denied without prejudice.

10. 15-20232-B-13 JASON NGUYEN — OMNIBUS OBJECTION TO CLAIMS
TLA-1 Thomas L. Amberg — 2-23-15 [27]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

The Omnibus Objection to Claims 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 Omnibus Objection to Proofs of Claim Numbers 1, 2, 3, and 4 of Kansas Department of Revenue is sustained.

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).

Jason Nguyen, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Kansas Department of Revenue ("Creditor"), Proof of Claim No. 1, 2, 3, and 4 ("Claims"). The Claims are asserted to be priority tax claims in the total amount of $308,438.78. Objector asserts that the amounts listed by the Creditor were improperly assessed by the taxing authority and the Debtor is working to resolve this. Debtor's Omnibus Objection to Proofs of Claim was served at the address listed on the proofs of claim filed by the Kansas Department of Revenue, and no objection or response has been filed.

Based on the evidence before the court, the Omnibus Objection to Proof of Claims shall be sustained. The claims in Proofs of Claim Numbers 1, 2, 3, and 4 of Kansas Department of Revenue are disallowed.

11. 12-23935-B-13 STACEY COUNCILMAN — MOTION TO AVOID LIEN OF CAPITAL ONE BANK
CK-3 Catherine King — 3-28-15 [44]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank ("Creditor") against property of Stacey Councilman ("Debtor") commonly known as 1015 Tulare Court, Redding, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,617.40. An abstract of judgment was recorded with Shasta County on September 29, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $223,000.00 as of the date of the petition. The unavoidable consensual liens total $279,145.39 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10.00 on Schedule C.

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

12. 10-37135-B-13 ALEKSEI/LARISA BAZANOV — MOTION FOR COMPENSATION FOR
14-2301 SLH-5 — SETH L. HANSON, PLAINTIFFS
BAZANOV ET AL V. CHASE BANK — ATTORNEY(S)
USA, NATIONAL ASSOCIATION — 3-6-15 [28]

Tentative: 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 denied.

Seth Hanson ("Applicant"), the attorney to Chapter 13 Debtors Aleksei Bazanov and Larisa Bazanov ("Client"), makes a request for the allowance of $5,550.00 in fees and $49.99 in costs. The fees and expenses are in connection with an adversary proceeding in which Plaintiff-Debtors were granted a default judgment on February 16, 2015. As the prevailing party, Plaintiffs claim they are entitled to an award of attorney fees under the contractual attorney fee provision in paragraph 17 of the Deed of Trust (Dkt. 31, Exh. B, para. 17). Paragraph 17 states, in part:

> We shall be entitled to collect all expenses incurred in pursuing remedies provided in this Section 17, including, but not limited to, reasonable attorneys' fees as permitted by applicable law, but not to exceed 20% of the outstanding principal and interest and costs of title evidence.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 31, pp. 21-22). However, the Deed of Trust defines the term "we" to mean the beneficiary under the Deed of Trust or, in other words, Chase Manhattan Bank USA. The court can find no other provision in the Deed of Trust that grants a similar right to the Debtors as the borrowers/trustors, who are defined as "you," "your," and "yours."

STATUTORY BASIS FOR AWARDING FEES TO PREVAILING PARTY IN AN ACTION ON A CONTRACT

Pursuant to California Code of Civil Procedure § 1717,

> (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.
>
> Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.
>
> Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit.

In light of the default judgment entered by the court on February 16, 2015, the Plaintiff-Debtors are the prevailing party in this action. However, it appears that there is neither contractual authority nor a statutory basis in this case for an award of attorney's fees to the Debtors as the trustors under the Deed of Trust. Therefore, Applicant's request for attorney's fees and costs will be denied.

13. 14-31739-B-13 MICHAEL ANTON — CONTINUED MOTION TO DISMISS CASE
JPJ-1 Scott M. Johnson — 2-25-15 [46]
Thru #14

Tentative Ruling: This matter is continued from March 17, 2015 and was deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Dismiss is granted.

As addressed in Item #14 below, the Debtor's plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. The Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,619.90, did not appear at the continued Meeting of Creditors to submit proof of his social security number, and the plan payment in the amount of $2,610.00 for months 1 through 4 does not equal the aggregate of the Trustee's fees, expenses, and claims.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

14. 14-31739-B-13 MICHAEL ANTON — MOTION TO CONFIRM PLAN
SJS-4 Scott M. Johnson — 3-3-15 [52]

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,619.90, which represents approximately 1 plan payment. By the time this hearing is heard, an additional plan payment in the amount of $2,610.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor did not appear at the continued Meeting of Creditors on March 19, 2015 to submit proof of his social security number to the trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Third, the plan payment in the amount of $2,610.00 for months 1 through 4 does 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.

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

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-15 [24]

FORD MOTOR CREDIT COMPANY
LLC VS.

Final Ruling: No appearance at the April 15, 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.

Ford Motor Credit Company, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Ford F350, VIN ending in -80340 (the "Vehicle"). The moving party has provided the Declaration of Tiffany Didur ("Didur Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Debtor has not made 2 post-petition payments, with a total of $2,237.40 in post-petition payments past due. The Declaration also provides evidence that there are 26 pre-petition payments in default, with a pre-petition arrearage of $29,086.20.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $32,471.12, as stated in the Didur Declaration. The value of the Vehicle is not included in the Didur Declaration nor Debtor's Schedules B, C, or D. In fact, the Vehicle is not listed at all in the Debtor's petition.

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

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

There also being no objections 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.

16. 14-24844-B-13 LOUIS NEMAN
LBG-2 Lucas B. Garcia

MOTION FOR COMPENSATION FOR LUCAS GARCIA, DEBTORS ATTORNEY(S)
3-16-15 [29]

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

The Motion for Allowance of Professional Fees is granted with the modification that $2,231.00 is paid through the attorney pre-petition retainer and the remaining balance of $700.62 is paid through the Chapter 13 plan.

Lucas Garcia ("Applicant"), the attorney to Chapter 13 Debtor Louis Neman ("Client"), makes request for the allowance of fees and expenses in the amount of $2,931.62. The period for which the fees are requested is for October 8, 2013 through March 10, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 33, Exh. A indicates a total fee of $2,487.00 and Dkt. 29, p. 2 indicates additional expenses of $23.62 in mailing, $281.00 filing fee, $40.00 credit card fee, and $100 for substitute attorney. The sum, altogether, of which is $2,931.62).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed $2,231.00 paid through the pre-petition retainer, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Balance of Fees	$700.62
Costs and Expenses	$0.00

17. 11-22347-B-13 PATRICK/DEBBIE BAIN MOTION TO MODIFY PLAN
BLG-3 Bruce Charles Dwiggins 3-3-15 [64]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

The Motion to Confirm the Modified 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.

18. 12-21947-B-13 ALLAN/NATALIE ANGELMAN MOTION TO MODIFY PLAN
BLG-5 Chad M. Johnson 2-27-15 [96]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $4,338.00, which represents approximately 1 plan payment. The Debtors do not appear to be making plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, due to Debtors' failure to make play payments timely under the terms of the previously confirmed plan, the Trustee lacked sufficient funds to pay the post-petition contract installments to America's Servicing Company for the months of December 2013 and January 2015 through March 2015. 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.

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

19. 15-20147-B-13 ANGEL CHEUNG — MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso — 3-2-15 [19]

Thru #20

Final Ruling: The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with the opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is denied without prejudice.

20. 15-20147-B-13 ANGEL CHEUNG — COUNTER MOTION TO DISMISS CASE
PGM-1 Peter G. Macaluso — 3-26-15 [36]

Tentative Ruling: The motion is conditionally denied.

Because the plan proposed by the Debtor 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. 14-30950-B-13 JESUS AVILA
JWC-1 Douglas B. Jacobs

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-15 [22]

BBCN BANK VS.

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 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 Motion for Relief From the Automatic Stay is granted.

BBCN Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2599 thru 2601 Esplande, Chico, California (the "Property"). Movant has provided the Declaration of Kelly Cho ("Cho Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

There are 2 post-petition defaults, with a total of $7,697.06 in post-petition payments past due. Additionally, there are approximately 272,501.23 in accrued and unpaid interest pre-petition.

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 $1,118,059.14 (including $957,920.14 secured by Movant's first deed of trust), as stated in the Cho Declaration and Schedule D filed by Jesus Avila ("Debtor"). The value of the Property is determined to be $750,000.00, 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).

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). And as of the date of this tentative ruling, there has been no showing that the property is necessary for an effective reorganization of the Debtor.

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.

There also being no objections 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.

22. 12-29354-B-13 DANIEL/ALTA GASPAR MOTION TO MODIFY PLAN
PLG-3 Chelsea A. Ryan 2-27-15 [81]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,069.00, which represent approximately 1 plan payment. The Debtors do not appear to be able to make the plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan filed on February 27, 2015, does not properly account for all payments the Debtors have paid to the Trustee to date.

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

23.	12-40756-B-13 EJS-4	PHILIP/LINDA CUMMINGS Eric John Schwab	MOTION FOR COMPENSATION FOR ERIC J. SCHWAB, DEBTORS ATTORNEY(S) 4-1-15 [101]

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

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

Eric J. Schwab ("Applicant"), the substituting attorney for Debtors Philip Cummings and Linda Cummings ("Clients"), makes a request for the allowance of fees in the amount of $3,850.00 and expenses in the amount of $352.00. The period for which the fees are requested is for December 30, 2014 through April 1, 2015. The order of the court approving employment of Applicant was entered on February 16, 2015 (Dkt. 81). Counsel states in a declaration filed April 1, 2015 (Dkt. 107), that he commenced serving as bankruptcy counsel for Debtors on February 11, 2015.

Prior to the substitution of Applicant as attorney, the Debtors were represented by C. Anthony Hughes and, prior to that, by John A. Tosney. Only Mr. Tosney received compensation in the total amount of $6,000.00 (of that amount, $4,000.00 was received pre-petition and $2,000.00 was paid through the Chapter 13 plan by the Trustee).

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 104, Exh. A).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

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

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Clients and bankruptcy estate and reasonable. However, the court will reduce the amount by 2.4 hours, which represents the time before counsel stated that he served as bankruptcy counsel on February 11, 2015. At $350.00 an hour, that reduction equals $840.00

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

Fees	$3,010.00
Costs and Expenses	$ 352.00

24. 14-30357-B-13 LEANNE DELICE
JPJ-2 Julius M. Engel

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
2-20-15 [22]

Final Ruling: No appearance at the April 15, 2015 hearing is required.

The Motion of Convert 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Leanne Delice ("Debtor") has been filed by Jan P. Johnson ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds.

First, the Debtor is delinquent to the Trustee in the amount of $4,577.00, which represents approximately 2 plan payments. By the time that this motion will be heard, an additional plan payment in the amount of $2,309.00 will also be due.

Second, the Debtor has not prosecuted this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 13007(c)(1). The Trustee's objection to confirmation of Chapter 13 plan was heard and sustained on December 16, 2015. To date, the Debtor has not taken any further action to confirm a plan in the case.

Third, the value of the non-exempt property in the estate is $68,450.00. Conversion to a Chapter 7 proceeding rather than dismissal of the case is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c).

The motion is granted and the case is converted to a case under Chapter 7.

25. 14-32457-B-13 JIMMY HAASE
CAH-2

MOTION TO CONFIRM PLAN
2-27-15 [32]

Tentative Ruling: The Motion to Confirm the 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).

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

Feasibility of the plan filed February 27, 2015, depends on the granting of a motion to value collateral of Wilmington Trust, N.A. for the second deed of trust on the Debtor's residence. The motion to value collateral of Wilmington Trust was heard on April 8, 2015, and continued for 60 days to be heard on June 10, 2015, to provide Wilmington Trust an opportunity to obtain a verified appraisal of the property.

The Debtor concedes that the plan is not confirmable at this time.

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

26. 11-36163-B-13 KYLE PURVIS MOTION TO MODIFY PLAN
JSO-8 Jeffrey S. Ogilvie 2-26-15 [112]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

First, the Debtor is delinquent to the Trustee in the amount of $1,210.25, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments as proposed and has not carried his burden of showing that the plan complied with 11 U.S.C. § 1325(a)(6).

Second, due to the Debtor's failure to make plan payment timely under the terms of the previously confirmed plan, the Chapter 13 Trustee lacked sufficient funds to pay the post-petition contract installments to Wels Fargo Home Mortgage for the month of February 2015. 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.

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

27. 12-20963-B-13 SHARON SOULES MOTION TO SELL
WW-3 Mark A. Wolff 3-25-15 [50]

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor Sharon Soules("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Movant proposes to sell the property described as 10069 Emerald Grove Drive, Elk Grove, California.

The proposed purchasers of the property are Steven Locke and Victoria Locke ("Buyers"). The Debtor anticipates receiving approximately $51,544.34 from the sale of the rental property. With these proceeds, Debtor will cover several other expenses including home repairs and obtaining a vehicle that is wheelchair accessible to accommodate her daughter who is confined in a wheelchair.

Debtor believes that the offer to purchase her property represents the fair market value of the property. Through the sale, all liens and security interests encumbering the property will be paid in full with the transfer of title or possession to the buyer. All costs of the sale, such as escrow fees, title insurance, and broker's commission, will be paid in full from the sale proceeds. The sale is all cash. The sale is an arms length transaction and the proposed buyers are not friends or relatives.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

28.	15-20164-B-13 DRE-1 **Thru #29**	GEORGE NJENGE AND RACHEL EKINDESONE D. Randall Ensminger	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA 2-26-15 [23]

Final Ruling: No appearance at the April 15, 2015 hearing is required. CONTINUED TO 4/20/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

29.	15-20164-B-13 JPJ-2	GEORGE NJENGE AND RACHEL EKINDESONE D. Randall Ensminger	CONTINUED MOTION TO DISMISS CASE 2-18-15 [19]

Final Ruling: No appearance at the April 15, 2015 hearing is required. CONTINUED TO 4/20/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

30. 15-21167-B-13 LIBERTY MAHINAY
JPJ-1 Ronda N. Edgar

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-26-15 [23]

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 claim of Wells Fargo Mortgage is mis-classified as a Class 4 claim because it is a secured claim that is in default with a pre-petition arrearage of $62,000.00. The claim should be classified as a Class 1 claim.

Second, the Debtor's attorney's fees of $6,000.00 exceeds the limits of nonbusiness cases, which is $4,000.00 pursuant to Local Bankr. R. 2016-1. This case is a nonbusiness cases so the attorney is not entitled to charge business fees.

Third, the Chapter 13 Trustee cannot pay the balance of the Debtor's attorney's fees and other administrative expenses through the plan with a monthly payment specified as $0.00.

Fourth, the Debtor has not provided proof of his social security number to the Trustee as required by Fed. R. Bankr. P. 4002(b)(1)(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.

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.

31. 15-21278-B-13 DOROTHY GUINANE — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
SDB-1 W. Scott de Bie — 3-13-15 [15]

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 JPMorgan Chase Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Dorothy Guinane ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1105 Taylor Avenue, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $150,000.00 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.

OPPOSITION

Creditor has filed an opposition disputing the Debtor's valuation of property. Creditor asserts that the subject property has a valuation of at least $200,000.00 based on the valuation of internet websites Zillow.com and Eppraisal.com. Counsel for Creditor has contacted Debtor's counsel to discuss this matter and arrange an opportunity to obtain a certified interior appraisal report to further substantiate value.

In its reply to the Creditor's opposition, the Debtor has provided an appraisal of the subject property conducted by Richard Straub, a certified appraiser (Dkt. 40, Exh. D).

Mr. Straub's appraisal of the property is $150,000.00 and supports the Debtor's estimated value.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $166,963.00. Creditor's second deed of trust secures a claim with a balance of approximately $78,756.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

32. 14-30481-B-13 TERRY/MARLYS ARNOLD MOTION TO INCUR DEBT
RHM-2 Robert Hale McConnell 3-31-15 [52]

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. If there is opposition, the court may reconsider this tentative ruling.

The Motion to Incur Debt is granted.

Terry Arnold and Marlys Arnold ("Debtors") seek permission to enter into a reverse loan agreement with personal lender Security 1 Lending for the purpose of obtaining sufficient funds to pay off the loan demand of their present lender, Rush My File, in the approximate amount of $299,387.88, the payoff amount provided to Debtors through April 10, 2015. The reverse loan agreement pertains to real property located at 12266 Taylor Avenue, Vallejo, California.

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 provided in the motion (Dkt. 52) and exhibits (Dkt. 55), is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

33. 14-28594-B-13 BROOKE PHAYER
JPJ-3 Pro Se

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
2-20-15 [49]

Add on #37

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Brooke Phayer ("Debtor") has been filed by Jan P. Johnson ("Movant"), the Chapter 13 Trustee. The case is converted on the following grounds:

First, the Debtor is delinquent to the Trustee in the amount of $3,750.00, which represents approximately 5 plan payments. By the time this motion will be heard, 2 additional plan payments in the amount of $750.00 will also be due. The Debtor has not made any plan payments since this petition was filed on August 25, 2014.

Second, the Debtor has not taken further action to confirm a plan in this case after the Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on October 28, 2014.

Third, the value of non-exempt property in the estate is $614,111.00. Conversion to a Chapter 7 proceeding rather than dismissal of case is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Fourth, the Trustee has received no funds from the County of Los Angeles Sheriff's Department. The Trustee does not have $2,513.00 of Debtor's levied account.

Fifth, providing the Debtor with 90-days' additional time to obtain legal representation would be a delay that would be prejudicial to creditors. This case was filed on August 25, 2014, and is currently in the eighth month.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(b) and § 1307(c).

The motion is granted and the case is converted to a case under Chapter 7.

34. 11-22595-B-13 JOANNE BRONSON
TJS-1 Edward A. Smith

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-12-15 [65]

JP MORGAN CHASE BANK, NA VS.

Final Ruling: No appearance at the April 15, 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).

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 denied.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 BMW 330I, VIN ending in -36291 (the "Vehicle"). The moving party has provided the Declaration of Maria Brown ("Brown Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Brown Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $2,582.08 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 this asset is determined to be $2,58.08, as stated in the Brown Declaration, while the value of the Vehicle is determined to be $17,050.00, as stated in Schedules B 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 since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

In the present case, the Debtor's Second Amended Plan was granted on March 29, 2015. As of March 30, 2015, the Trustee has $23,391.56 cash on hand to distribute to creditors. From this disbursement, all creditors will be current. Therefore, Movant is adequately protected. Movant is also adequately protected by a significant equity cushion and a collateral.

As such, the court will not terminate and vacate the automatic stay to allow JPMorgan Chase 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.

35. 15-20996-B-13 WARREN DITTMAR
RCO-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY JAMES B. NUTTER AND COMPANY
3-4-15 [17]

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 overrule the Objection as moot.

James B. Nutter & Company ("Creditor") objects to Debtor's plan filed on February 9, 2015. However, on March 19, 2015, the Debtor filed an amended plan. This amended plan is scheduled to be heard on Mary 6, 2015. The amended plan provides the full amount of the claim as filed by Creditor.

The Objection is overruled as moot.

36. 15-21097-B-13 IDA BELL
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-26-15 [16]

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 is delinquent to the Chapter 13 Trustee in the amount of $500.00, which represents approximately 1 plan payment. The Debtor does no appear to be able to make the plan payments proposed and has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Trustee cannot fully assess feasibility of the plan or effectively administer the estate because the monthly dividend of Class 2 creditor, Santander Consumer USA, of the plan filed February 13, 2015, is incomplete as it merely states "100.00 x 9; $."

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. 14-28594-B-13 BROOKE PHAYER
Pro Se

MOTION TO GRANT RELEASE OF DEBTOR FUNDS HELD BY TRUSTEE OR IN THE ALTERNATIVE RELEASE FUNDS TO DEBTOR'S ATTORNEY AND TO ALLOW ADDITIONAL 90 DAYS FOR LEGAL REPRESENTATION
4-1-15 [55]

Add on #33

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. If there is opposition, the court may reconsider this tentative ruling.

The Motion to Grant Release of Funds and Allow Additional 90 Days for Legal Representation is denied.

The court finds that the Trustee has received no funds from the County of Los Angeles Sheriff's Department. The Trustee does not have $2,513.00 of Debtor's levied account. Additionally, providing the Debtor with 90-days' additional time to obtain legal representation would be a delay that would be prejudicial to creditors. This case was filed on August 25, 2014, and is currently in the eighth month.

38. 15-22805-B-13 AHMED CHARTAEV
Pro Se

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY O.S.T. 4-9-15 [11]

Tentative Ruling: The court issues no 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 motion will be determined at the scheduled hearing.