UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 18, 2017 at 1:00 p.m.

---

1. 17-20407-B-13 FORREST GARDENS — MOTION TO CONFIRM PLAN
MRL-3 Mikalah R. Liviakis — 3-16-17 [45]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

The Motion to Confirm the Amended Plan was not set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 31-days' notice was provided.

The court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

2. 12-39713-B-13 DONALD FLAVEL — CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
MAC-4 Marc A. Carpenter — 12-4-15 [68]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change 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 matter will be determined at the scheduled hearing and not further continuances shall be permitted.

This matter was continued from March 14, 2017, before that from February 7, 2017, before that from January 3, 2017, and before that from October 18, 2016. The Debtor filed a status report on January 29, 2017, stating that Capital One, N.A. continues to review Debtor's information in order to reach a decision to modify Debtor's current mortgage loan that is secured by his residence.

Capital One, N.A. filed an updated status report stating that due to incompleteness of income, the loan modification application is in the process of being denied. However, Capital One, N.A. will review a payment plan on delinquent post-petition taxes and insurance, and that actual figures will be provided to Debtor's counsel for review prior to the April 18, 2017, hearing with the intention of resolving the pending objection to notice of payment change.

3. 13-23313-B-13 JENNIFER JOHNSON
WW-4 Mark A. Wolff

MOTION TO APPROVE LOAN MODIFICATION
3-28-17 [68]

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

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

Debtor seeks court approval to incur post-petition credit. Seterus, Inc. ("Creditor"), loan servicer for Federal National Mortgage Association, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,972.06 a month to $1,826.40 a month. The modification will reduces the Debtor's interest rate from 4.625% to 3.50%. The monthly payment will begin on June 1, 2017, for a commitment term of 480 months. The Debtor is current on payments due under her plan and has completed 47 months of her 48-month plan.

The motion is supported by the Declaration of Jenner Johnson. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

The court will enter an appropriate minute order.

4. 16-28315-B-13 LILIBETH SELLI MOTION TO CONFIRM PLAN
DEF-2 David Foyil 3-2-17 [33]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 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 not confirm the first amended 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 is not using her best efforts under 11 U.S.C. § 1325(b). The Debtor is below the median income and proposes plan payments of $188.00 for 2 months then $515.00 for 58 months with 0% dividend. However, the Debtor stated at the meeting of creditors that she receives $850.00 per month from rental income, which is not listed on Schedule I.

Third, the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). The Debtor's plan provides for Western Loan Servicing in Class 4 at $536.50 per month but this expense is not listed on Schedule J.

Fourth, the plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4) because the Debtor's non-exempt equity totals $17,806.00 and the Debtor proposes a 0% dividend to unsecured creditors. The Debtor does propose to pay priority creditors $14,520.00

Fifth, the Debtor has not amended the Statement of Financial Affairs at Question #16 to provide that the Debtor's attorney's fees of $2,500.00 were paid prior to filing the petition.

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

The court will enter an appropriate minute order.

5. 17-20020-B-13 BRENDA PEARL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRG-1 Peter G. Macaluso — 3-30-17 [48]

VENTURE WORKS, LLC VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From the Automatic Stay 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 deny without prejudice the motion for relief from stay.

Venture Works, LLC ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) with respect to the real property commonly known as 7598 Macfinley Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Nick Hawryluk to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Hawryluk Declaration states that there are 2 post-petition defaults, with a total of $1,323.96 in post-petition payments past due. Additionally, there are 95 pre-petition payments in default, with a total of $64,874.04 in pre-petition payments past due.

Debtor filed an opposition asserting that she did not intentionally delay, hinder, or defraud creditors. The Debtor also argues that the Creditor will receive adequate protection payments in Class 1 and will be paid through the plan.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $147,483.55 as stated in the Hawryluk Declaration. The value of the Property is determined to be $260,000.00 as stated in Schedules A and D filed by Debtor.

Discussion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim is 43.27%, which provides adequate protection at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Additionally, the court will not grant relief under § 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor has indeed filed for bankruptcy twice within the past eight months. In the prior bankruptcy case, the Debtor filed her petition pro se two days before the redemption period expired following the recording of a Notice of Default and Election to Sell Under Deed of Trust. That case was subsequently dismissed on October 14, 2016, because the Debtor failed to appear at the meeting of creditors, failed to receive credit counseling briefing, failed to provide the Trustee with payment advices, failed to provide the Trustee with a copy of her federal income tax, failed to provide the Trustee with documents, and had proposed a plan that was incomplete, exceeded the proposed plan duration, and was not feasible. *See* dkt 41. On January 3, 2017, the Debtor filed the present bankruptcy two days before Movant's scheduled sale of the property. In this case, Debtor is represented by counsel.

Although the Debtor has filed for bankruptcy twice within the last eight months, the court is not persuaded that the filings were a scheme to hinder, delay, or defraud creditors but rather were done in an effort to save her home. The Debtor was a pro se debtor in the previous bankruptcy, unfamiliar with the responsibilities required of a Chapter 13 debtor, and thus her case was dismissed.

Therefore, the court will not issue an order terminating and vacating the automatic stay and the motion is denied without prejudice.

The court will enter an appropriate minute order.

6. 16-25930-B-13 ANGELINA ROBINSON MOTION TO CONFIRM PLAN
RS-3 Richard L. Sturdevant 3-5-17 [59]

DEBTOR DISMISSED: 03/10/2017

Tentative Ruling: The case was dismissed on March 10, 2017. The Debtor failed to appear at the hearing on the Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case held on March 7, 2017, at 1:00 p.m. At the time of the hearing on March 7, 2017, the Debtor had filed an amended plan on March 5, 2017; however, the Debtor remained delinquent in plan payments and also failed to file or set for hearing a motion to value as represented by the Debtor in her opposition to the Trustee's motion to convert or dismiss case. The case was subsequently dismissed on March 10, 2017. Therefore, this motion to confirm plan is dismissed as moot.

The court will enter an appropriate minute order.

7. 11-21232-B-13 LESZEK/IWONA FEDYCKI
MS-2 Mark Shmorgon

MOTION TO AVOID LIEN OF BENJAMIN VANOVEREEM, KRISTEN VANOVEREEM AND ANTONIO M. AVELAR DBA SANTA CLARA REALTY
3-10-17 [145]

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

The court's decision is to set the matter for an evidentiary hearing and to set a discovery schedule.

This is the Debtors' third motion to avoid lien. The first was denied without prejudice in March 2011 by Justice Holman. Dkt. 66. The second was denied without prejudice on February 24, 2017, by this court. Dkt. 141. Since that time, the Debtors have amended Schedules A and C to show that the real property that is the subject of this motion is 2633 California Avenue, Carmichael, California ("Property") and not 2639 California Avenue, Carmichael, California.

Debtors assert that the County of Sacramento provides just one official address that is 2633 California Avenue, Carmichael, California but that the postal service has provided four separate mailing address, one for each unit. Those addresses are 2633, 2635, 2637, and 2639 California Avenue, Carmichael, California. Debtors assert that the four addresses are really one property and provide as an exhibit the property tax bill and utility bills showing the Debtors as the owners of the entire parcel with all four addresses. According to the Debtors, the real property as a whole has a fair market value of $375,000.00 as of the date the petition was filed. Debtors argue that the superior liens exceed the value of the Property and that the judicial lien of Benjamin and Kristen Vandareem and Antonio Avelar (collectively, "Creditors") impairs the $1.00 exemption claimed by the Debtors.

Creditors dispute valuation. Creditors argue that the correct value of the Property is based on its "income-producing properties" and that this value is distinguishable from a residential property. Creditors assert that valuation is based on the relationship between the rate of return and the net income that the property produces. Creditors argue that this is often determined by reviewing a property's rent rolls, deducting the annual operating expenses to calculate annual net operating income, estimating the rate of return or capitalization rate, and applying the capitalization rate to the property's annual net operating income. Alternatively, Creditors state that valuation may be based on the gross rent multiplier ("GRM") to estimate the value of the rental property. To support these theories of valuation, Creditors do not cite to any legal authority but provide the Declaration of Antonio Avelar.

The Creditors believe that they must conduct discovery into the Debtors' rent rolls and operating expenses as of the petition date. Creditors request that the court continue the hearing for 60-90 days to allow them to obtain more information and determine valuation.

Based on the dispute over value, this matter will be set for an evidentiary hearing. A discover schedule will also be set.

The court will enter an appropriate minute order

8. 15-25534-B-13 LAWRENCE/KAPRICE CRAWFORD
JPJ-3 Peter G. Macaluso
Thru #9

CONTINUED MOTION TO RECONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
2-9-17 [95]

Tentative Ruling: The Trustee's Motion to Reconvert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was originally 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 was filed.

The court's decision is to deny the motion to reconvert or in the alternative dismiss case.

This matter was continued from April 18, 2017, to be heard in conjunction with the Debtors' motion to modify plan. As stated at the previous hearing, if the modified plan is not confirmed, the case will be converted to one under Chapter 7. The modified plan is granted at Item #9. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

9. 15-25534-B-13 LAWRENCE/KAPRICE CRAWFORD
PGM-3 Peter G. Macaluso

MOTION TO MODIFY PLAN
3-9-17 [102]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 9, 2017, 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 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 filed on March 9, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10. 17-20341-B-13 LORENA MONTESINOS
JPJ-1 Aubrey L. Jacobsen
Thru #11

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-9-17 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply by the Debtor was filed to the objection.

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

This matter was continued from April 4, 2017, to be heard in conjunction with the motion to value collateral of AFS Acceptance. The Trustee's sole objection was that feasibility of the plan depends on the granting of the motion to value collateral of AFS Acceptance. That motion is granted at Item #11. Therefore, the Trustee's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed February 2, 2017, is confirmed.

The court will enter an appropriate minute order.

11. 17-20341-B-13 LORENA MONTESINOS
TAG-1 Aubrey L. Jacobsen

MOTION TO VALUE COLLATERAL OF AFS ACCEPTANCE
3-15-17 [24]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

The Motion to Value Collateral Pursuant to 11 U.S.C. § 506(a)(2) 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 court's decision is to value the secured claim of AFS Acceptance at $6,040.00.

Debtor's motion to value the secured claim of AFS Acceptance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Toyota Yaris ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,040.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that

Claim No. 1-1 filed by AFS Acceptance, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,402.15. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $6,040.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

12. 13-26844-B-13 DIOSDADO RODRIGUEZ — MOTION TO APPROVE LOAN MODIFICATION
SDH-3 Scott D. Hughes — 3-17-17 [42]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

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

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

Debtor seeks court approval to incur post-petition credit with Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 1. The Debtor asserts that he has been making trial modification payments through the Trustee for several months. A review of the court's docket reflects that Creditor has filed five Notice of Mortgage Payment Changes since the plan was confirmed on August 7, 2013. The most recent Notice of Mortgage Payment Change filed October 17, 2016, reflects a total mortgage payment of $2,564.65. The instant loan modification will have a reduced total monthly payment of $2,061.40 beginning March 1, 2017. The new interest rate is 3.00% for 480 months with a maturity date of February 1, 2057.

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

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

The court will enter an appropriate minute order.

13. 16-26751-B-13 JASON/KATHERINE GETTINGS MOTION TO MODIFY PLAN
RJM-1 Rick Morin 3-3-17 [22]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the requested modification and confirm the modified plan provided that the plan payments are increased to account for Debtors' higher monthly net income due to the cessation of payments on two 401k loans.

The Trustee objects to confirmation of the plan on the ground that the Debtors do not appear to be putting forth their best efforts to repay their creditors. *See* 11 U.S.C. § 1325(a)(3). The Debtors testified at their meeting of creditors on November 17, 2016, that both of their 401k loans listed under Line 5d of Schedule I in the amounts of $219.64 and $450.78, respectively, would be paid off in approximately three years. However, the first modified plan does not specify an increase in the plan payments as a result of the increase of the Debtors' monthly net income due to the cessation of the payments on the two loans.

The Debtors have filed a response proposing the following increases in plan payments: months 1-4 $1,200 per month; months 4-23 $650 per month; months 24-36 $1,110 per month; and months 37-60 $1,320 per month. Debtors assert that these plan payments will result in approximately $23,000 paid to unsecured non-priority claims, which is more than the $3,760 specified in the Debtors' first modified plan.

Provided that these increases are made, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

14. 16-22152-B-13 THOMAS/DENISE RAHMING ORDER TO SHOW CAUSE
Thru #15 Eamonn Foster 3-28-17 [72]

Tentative Ruling: The court issued an order to show cause requiring Debtors' counsel Eamonn Foster to explain in writing why he is not in violation of Local Bankr. R. 2017-1(a)(1) and why compensation received from the Debtors does not exceed the reasonable value of services provided pursuant to 11 U.S.C. § 329(b). Counsel was ordered to appear personally at the hearing on this matter. Counsel's response was filed on March 29, 2017.

The court's decision is to determine the matter at the schedule hearing.

15. 16-22152-B-13 THOMAS/DENISE RAHMING MOTION TO MODIFY PLAN
NBC-4 Eamonn Foster 3-6-17 [57]

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 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 determine the matter at the scheduled hearing.

The Additional Provisions of the plan filed March 6, 2017, are unclear. The Additional Provisions propose monthly plan payments of $1,920.00 with the first payment due February 25, 2016. However, this would mean that the first payment would be due two months before the petition was filed on April 5, 2016.

The Debtors have not filed a response stating whether this was a typographical error and that the first payment should be due February 25, 2017.

16.	16-24559-B-13 JPJ-1	STEVEN SIPE Lucas B. Garcia	OBJECTION TO CLAIM OF LES SCHWAB TIRE CENTER OF AUBURN, CLAIM NUMBER 20 3-3-17 [84]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 20 of Les Schwab Tire Center of Auburn and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Les Schwab Tire Center of Auburn ("Creditor"), Proof of Claim No. 20 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $6,080.44. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 16, 2016. Notice of Bankruptcy Case, dkt. 17. The Creditor's Proof of Claim was filed January 31, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order

17. 17-22063-B-13 NAMATH KANDAHARI MOTION TO EXTEND AUTOMATIC STAY
TJW-1 Timothy J. Walsh 3-31-17 [8]

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 court's decision is to deny the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on January 21, 2017, since the Debtor failed to appear at the meeting of creditors and because the plan was not confirmable (case no. 16-27148, dkts. 42, 45). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the previous case was filed in an effort to save his home and provide payments to Nationstar Mortgage based on an anticipated loan modification. The modification was never approved during the pendency of the previous bankruptcy. After the previous case was dismissed, the Debtor received a Notice of Sale recorded on March 3, 2017, with a scheduled auction date of March 30, 2017. The Debtor filed this case on March 29, 2017, hoping to obtain a loan modification or to find a buyer for the home rather than having the home sold at auction. The Debtor asserts that he is able to make monthly payments to the Trustee to cover ongoing mortgage payments to Nationstar Mortgage for a period not to exceed 12 months and thereafter to increase payments. However, the Debtor has not explained how his circumstances have changed or how this case is likely to succeed.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied and the automatic stay is not extended for all purposes and parties.

The court will enter an appropriate minute order.

18. 15-24164-B-13 JAKE/BRENDA ESCALANTE MOTION TO MODIFY PLAN
FF-3 Gary Ray Fraley 3-7-17 [69]

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 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 will take approximately 61 months to complete, which is 22 months longer than the proposed Duration of Payments of 39 months as stated in Section 1.03 of the plan. Monthly payments may only continue for an additional 6 months pursuant to § 1.02 of the mandatory form plan.

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.

19. 12-25066-B-13 ADRAINE ROSS
JPJ-1 Peter G. Macaluso

OBJECTION TO CLAIM OF HOUSEHOLD FINANCE, CLAIM NUMBER 9
3-3-17 [34]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 9 of Household Finance and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Household Finance ("Creditor"), Claim No. 9. The claim is asserted to be in the amount of $5,102.00. Objector asserts that this claim appears to be a duplicate of Claim No. 3 filed by Cavalry Portfolio Services/Household Finance in the amount of $4,453.69 since both proof of claims list Household Finance. Additionally, Cavalry Portfolio Services confirmed by email to the Trustee that Claim No. 9 is a duplicate of Claim No. 3.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that Claim No. 9 is a duplicate of Claim No. 3. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, Claim No. 9 is disallowed in its entirety. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

20. 14-28069-B-13 JUNE/MILAGROS FABILLARAN MOTION TO INCUR DEBT
WW-3 Mark A. Wolff 3-28-17 [35]

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

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt provided that the Debtors file amended Schedules I and J as separate docketed items with the court by April 21, 2017.

The motion seeks permission to purchase real property, the total purchase price of which is $379,000.00 the amount to be financed is $381,149.00, and monthly payments including escrow of $2,358.00. The interest rate is 4.5% for a term of 30 years. Debtors assert that at the time the case was filed, they were renting a property but were advised by their landlord in late-2016 that the property was in the process of being sold. The Debtors state that they looked for other properties to rent, but the prices were higher than their current rental price of $1,300.00 per month. Debtors alternatively decided to look into purchasing a residence using Debtor's VA benefits. Debtors found a property that they would like to purchase, have placed an offer on the property, received a counteroffer, have opened escrow, and anticipate closing between April 19, 2017, and April 29, 2017. Debtors assert that they will be able to afford the new monthly payments as supported by amended Schedules I and J filed as exhibits. *See* dtk. 38, exh. C.

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. 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.

21.	14-28782-B-13 PGM-3	EDDIE DANIELS IRVING Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSCO, DEBTOR'S ATTORNEY 3-15-17 [87]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

The Application for Attorney 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.

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since September 11, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 59. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $1,815.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 87.

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

Applicant asserts that he substituted into this case, has received no compensation for the work performed in this case, and that additional attorney's fees are reasonable for the legal services rendered. These services include a motion to modify plan, motion to value collateral, and general correspondences, emails, and file review. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors. However, the court limits compensation to unanticipated time after the order approving substitution of attorney was entered on September 14, 2015. Counsel includes 1.50 hours at $300 per hour for time prior to that date, which will be disallowed.

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

Additional Fees	$1,815.00
Additional Costs and Expenses	$ 0.00
Less	$ 450.00
Total	**$1,365.00**

The court will enter an appropriate minute order.

22. 17-20792-B-13 MICHAEL WARREN
RCO-1 David P. Ritzinger

OBJECTION TO CONFIRMATION OF PLAN BY FRANKLIN AMERICAN MORTAGAGE COMPANY
3-28-17 [14]

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

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

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $1,520.67 in pre-petition arrearages but has not yet filed a proof of claim. Although the proof of claim deadline has not passed, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The Declaration of Corletta Black provides only a general statement that the Debtor's plan fails to cure pre-petition arrears and it does not mention the claimed amount or how the claimed amount was calculated. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed February 8, 2017, is confirmed.

The court will enter an appropriate minute order.

23. 16-21793-B-13 ABU ALAMIN
MLF-6 Jessica R. Galletta

MOTION TO APPROVE LOAN MODIFICATION
4-2-17 [108]

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

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

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), has required that Debtor seek approval of the instant modification with a monthly mortgage payment of $1,254.26, which is identical as the trial period monthly mortgage amount listed in the Notice of Mortgage Payment Change filed November 21, 2016. This amount was also provided for in Class 4 of the amended plan filed November 26, 2016, and confirmed on January 24, 2017. Dkt. 107. The instant modification provides a step-rate modification and payment schedule that caps at 4.125%. The monthly payments include payments for Debtor's property taxes and insurance.

The motion is supported by the Declaration of Abu Q. Alamin. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

The court will enter an appropriate minute order.

24. 17-20493-B-13 CRAIG/KRISTINE DIEZ — MOTION TO CONFIRM PLAN
SNM-2 Stephen N. Murphy — 3-1-17 [23]

Final Ruling: No appearance at the April 18, 2017, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 1, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.