UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 3, 2016 at 1:00 p.m.

1.	13-29501-B-13 CJO-1	RORY/SHELLY PETERS Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 4-16-16 [51]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Court 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 not permit the loan modification requested.

Debtors seek court approval to enter into and finalize a loan modification with Ditech Financial, LLC, fka Green Tree Servicing, LLC ("Creditor") that will allegedly reduce Debtors' mortgage payments. Although the Debtors have filed the loan modification agreement as Exhibit 1, the Debtors' motion does not state with particularity the grounds for relief sought. There is also no evidence showing that Ditech Financial, LLC, fka Green Tree Servicing, LLC is the creditor. The Debtors do not testify that they borrowed money from, signed a promissory note with, or that a promissory note was assigned or transferred to Ditech Financial, LLC, fka Green Tree Servicing, LLC. In fact, Class 4 of the plan lists the creditor with a claim against Debtors' primary residence as Bank of America, N.A.

Additionally, the Debtors have failed to submit a Declaration stating their desire and ability to pay this claim on the modified terms.

The motion is denied without prejudice.

2. 16-20809-B-13 JOSEPH/ANGELA BIASI MOTION TO CONFIRM PLAN
RLC-1 Stephen M. Reynolds 3-9-16 [17]

Tentative Ruling: The Motion to Confirm 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 amended plan.

First, it is unclear which plan the Debtors seek to confirm. The Debtor's motion refers to a plan dated March 3, 2016. However, there was no plan filed on that date and instead there were plans filed March 2, 2016, and March 9, 2016.

Second, because the State Board of Equalization filed a priority claim in an amount that is greater than that scheduled by the Debtors, the plan will take approximately 91 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the amount of attorney's fees to be paid through the plan is unclear. The Debtors list differing amounts in the Rights and Responsibilities and the Disclosure of Compensation of Attorney.

Fourth, the Joint 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 Joint Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fifth, the Chapter 13 Statement of Current Monthly income filed March 2, 2016, does not list income from the Debtors' business that was received in the six months prior to filing. Without this income properly listed, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Sixth, the Debtors have not amended Schedule I and #4 of the Statement of Financial Affairs as requested by the Chapter 13 Trustee at the meeting of creditors. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Seventh, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtors' income from rental property or the operation of a business.

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

3.	16-21009-B-13 JPJ-1	TIMOTHY/LINDA KNIGHT D. Randall Ensminger	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-13-16 [25]

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 Debtors, 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 and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 13, 2016. The confirmation hearing for the amended plan is scheduled for June 7, 2016. The earlier plan filed February 23, 2016, is not confirmed.

4. 14-21025-B-13 GAYLEN/TERRI LUSCH — MOTION TO MODIFY PLAN
ULC-7 Ronald W. Holland — 3-21-16 [73]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated March 10, 2016, 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). An opposition by the Trustee and response by the Debtors have been filed.

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

5.	16-21328-B-13 JPJ-2	GABRIEL GOMEZ AND ANGELICA CERVANTES David Foyil	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 4-13-16 [22]

CONTINUED TO 5/10/16 AT 1:00 P.M. TO BE HEARD AFTER § 341 MEETING ON 5/05/16.

Final Ruling: No appearance at the May 3, 2016, hearing is required.

6. 16-21131-B-13 SALVADOR/GUADALUPE PEREZ — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 — Peter L. Cianchetta — 4-13-16 [21]
Thru #7

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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors failed to appear at the first meeting of creditors set for April 7, 2016, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to May 5, 2016, to allow the Debtors the opportunity to be examined under oath.

Second, the Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtors have 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 Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtors' income from rental property or the operation of a business.

Fifth, the claim of Wells Fargo Mortgage is misclassified as a Class 1 claim. According to the Additional Provisions, the creditor will receive an "adequate protection" payment per month pending approval of a loan modification. The claim is not a Class 1 in substance since it will not receive ongoing monthly contractual payments. Because the Additional Provisions state that the creditor will receive "adequate protection" payments instead of ongoing monthly contractual payments, the plan modifies the claim which is not permissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). Because this is an impermissible modification under § 1322(b)(2), this court does not allow additional provisions to provide for "adequate protection" to a creditor whose claim is secured by a deed of trust recorded against the Debtors' principle residence absent the creditor's express written consent.

Sixth, the plan overstates the attorney's fees by an additional $1,690.00. Pursuant to Local Bankr. R. 2016-1, the maximum fee that may be charged is $4,000.00 in nonbusiness cases and $6,000.00 in business cases.

The plan filed March 11, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

7.	16-21131-B-13 MDE-1	SALVADOR/GUADALUPE PEREZ Peter L. Cianchetta	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-6-16 [18]

Tentative Ruling: The Limited 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 Debtors, 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 deny confirmation of the plan for reasons stated at Item #6.

The objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor asserts $28,461.46 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed March 11, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #6 and is not confirmed.

8. 11-39832-B-13 RICHARD TUCKER AND ANNIE BONES-TUCKER
PGM-1 Peter G. Macaluso

MOTION TO INCUR DEBT
4-4-16 [50]

Tentative Ruling: The Motion to Incur Debt 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 by the Chapter 13 Trustee and a response by the Debtors have been filed.

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

The motion seeks permission to purchase a 2014 Toyota Camry, the total purchase price of which is $20,922.77, with monthly payments of $550.00 and a 13.70% to 17.99% interest rate.

The Trustee has filed an opposition stating that the motion is not reasonable or in the best interest of Debtors. According to the Trustee, the Debtors desire to incur debt despite not filing a modified plan to pay more toward general unsecured creditors after Joint Debtor obtained a second job approximately 20 months ago with an additional monthly income of $2,009.43. Given the very small amount that the unsecured creditors will be paid, the Trustee asserts that the Debtors have failed to demonstrate the reasonableness of purchasing a fairly new vehicle or demonstrate that the interest rate, whether 13.70% or 17.99%, is reasonable and in the best interest of the Debtors. Additionally, based on amended Schedule J filed April 4, 2016, the Debtors' monthly living expenses have increased substantially without any explanation and the Trustee requests copies of monthly billing statements to assess the validity of these increases.

The Debtors have filed a response stating that the interest rate for the vehicle is 13.70%, acknowledging that they failed to notify the Trustee that Joint Debtor had acquired a second job, and acknowledging that they will need to obtain the monthly billing statements requested by the Trustee.

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 transaction is not in the best interest of the Debtors. The loan calls for a substantial interest charge of 13.70%. Moreover, it is unclear to the court how in good faith the Debtors could propose to purchase a car when paying holders of unsecured claims only 6%, or $3,197.99. The motion is denied without prejudice and the Debtors shall provide the Trustee with monthly billing statements to assess the validity of monthly living expenses listed on amended Schedule J.

9. 15-27135-B-13 SYLVIA GUIDO — MOTION TO MODIFY PLAN
SS-1 Scott D. Shumaker — 3-25-16 [24]

Final Ruling: No appearance at the May 3, 2016, hearing is required.

The Debtor's Motion to Confirm Debtor's First Modified Chapter 13 Plan Filed March 25, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 25, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

10. 11-46037-B-13 JAVIER CONTRERAS
CYB-5 Candace Y. Brooks

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BROOKS CARPENTER FOR CANDACE Y. BROOKS, DEBTORS ATTORNEY(S)
4-14-16 [73]

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor Chapter 13 plan, Candace Brooks ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $3,400.00 (and not $3,500.00 as stated in the motion), $1,300.00 of which was paid prior to the filing of the petition (and not $1,350.00 as stated in Applicants Declaration) and the balance of $2,100.00 which was to be paid by the Trustee from plan payments. Dkt. 31. The maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation was $3,500.00. Applicant now seeks additional compensation in the amount of $4,125.00 in fees, which includes $2,125.00 already paid on Debtor's behalf that is currently held in Applicant's trust account, and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 76.

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).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would request the Applicant's assistance with the purchase of a piece of real property two years after the plan was confirmed on May 14, 2012. The Applicant states that she prepared three (3) separate motions requesting the court that the Debtor be allowed to incur debt, although only two of those motions actually resulted in a hearing and both of which were granted by the court. Dkts. 67, 81. 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.

Applicant is allowed additional fees in the amount of $4,125.00. The Trustee is authorized to pay $2,000.00 as compensation to this professional in this case:

Additional fees paid by Trustee	$2,000.00
Additional fees held in trust	$2,125.00
Additional Costs and Expenses	$ 0.00
Total	**$4,125.00**

11. 16-20840-B-13 SANDRA SAWYER — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Mark A. Wolff — 4-6-16 [36]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release pursuant to Local Bankr. R. 3015-1(b)(6). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, feasibility depends on a motion to value collateral for Chase. The Debtor has not filed, set for hearing, and served on the respondent creditor and the trustee a stand-along motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Third, the claim of Wells Fargo is misclassified as a Class 1 claim. According to the Additional Provisions, the creditor will receive an "adequate protection" payment per month pending approval of a loan modification. The claim is not a Class 1 in substance since it will not receive ongoing monthly contractual payments. Because the Additional Provisions state that the creditor will receive "adequate protection" payments instead of ongoing monthly contractual payments, the plan modifies the claim which is not permissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). Because this is an impermissible modification under § 1322(b)(2), this court does not allow additional provisions to provide for "adequate protection" payments to a creditor whose claim is secured by a deed of trust recorded against the Debtors' principle residence absent the creditor's express written consent.

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

Fifth, the Debtor has failed to file a Notice of Related Cases pursuant to Local Bankr. R. 1015-1(a). Section 10 of the petition filed February 16, 2016, shows that the Debtor's case is related to the case of Leslie W. Sawyer, case no. 15-28646.

Sixth, the amount of attorney's fees to be paid through the plan is unclear. The Debtor lists differing pre-petition payments in the Rights and Responsibilities and the Disclosure of Compensation of Attorney.

The plan filed February 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

12. 16-22042-B-13 GARY BITTERS
SJS-2 Scott J. Sagaria

MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE
4-5-16 [13]

Final Ruling: No appearance at the May 3, 2016, hearing is required.

The Debtor's Motion to Value Collateral of Carmax Auto Finance 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 Carmax Auto Finance at $7,027.00.

The motion filed by Debtor to value the secured claim of Carmax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Honda Civic LS ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $7,027.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in August 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,547.00. 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 $7,027.00. *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.

13. 11-39246-B-13 ROWENA WALKER
PGM-2 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
3-29-16 [123]

Final Ruling: No appearance at the May 3, 2016, 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 $3,500.00. Dkt. 56. 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 $750.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 123.

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 it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would have to file a motion to reconsider dismissal and subsequent motion to modify because the case was dismissed prior to Applicant taking over cases from Hughes Financial Law. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of $750.00 instead of $1,440.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$750.00
Additional Costs and Expenses	$ 0.00

14. 15-25547-B-13 TIMOTHY/MONICA BARRY MOTION TO DISMISS CASE
MWB-5 Mark W. Briden 4-14-16 [132]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtors' Motion for Order Dismissing Chapter 13 Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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.

The court's decision is to dismiss the case.

The Debtors filed their petition on July 13, 2015. Three amended plans have been filed and no plans have been confirmed due to the Debtors' withdrawal of the amended plan or opposition filed by the Chapter 13 Trustee or creditors. The Debtors, through their attorney of record Mark W. Briden, and creditors Mervyn and Janet Mihan, through their joint attorneys Robert M. Harding and Howard S. Nevins, have reached a settlement agreement and request an order dismissing this case.

The Mihans have filed a statement in support of the Debtors' motion for order dismissing the chapter 13 case.

The court finds that dismissal of this case is in the best interest of the Debtors and the Mihans and is not prejudicial to other creditors who are free to enforce their rights and remedies against the Debtors if they wish to do so. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

15. 15-28948-B-13 RICHARD/GERINE CAYLOR MOTION TO CONFIRM PLAN
JSO-3 Jeffrey S. Ogilvie 3-10-16 [51]

Tentative Ruling: The court issues no 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 by the Trustee and a response by the Debtors have been filed.

The matter will be determined at the scheduled hearing.

16. 16-21258-B-13 LONNEL WALKER
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-13-16 [17]

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). The Debtor has filed a response to the Trustee's objection.

The court's decision is to overrule the objection, deny the motion to dismiss without prejudice, and confirm the plan.

The Debtor appeared at the continued § 341 meeting of creditors held on April 21, 2016.

There being no other objections, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied without prejudice, and the plan filed March 14, 2016, is confirmed.

17. 11-28859-B-13 JPJ-2 | ROBERT/SANDRA POWELL
Patrick Riazi | OBJECTION TO CLAIM OF OPERATING ENGINEERS LOCAL 3 FCU, CLAIM NUMBER 15
3-15-16 [63]

Final Ruling: No appearance at the May 3, 2016, 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. 15 of Operating Engineers Local 3 FCU and disallow the claim in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Operating Engineers Local 3 FCU ("Creditor"), Claim No. 15. The claim is asserted to be unsecured in the amount of $15,694.66. Objector asserts that the claim is a duplicate of Claim No. 9.

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

The court finds that the proof of claim is a duplicate of Claim No. 9 as both proofs of claims include the same documentation and the same claim amount. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

18. 16-21470-B-13 RONALD BROOKS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1 Scott D. Shumaker — 4-6-16 [18]

TRAVIS CREDIT UNION VS.

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

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

Travis Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Ford F250, VIN ending in 12776 (the "Vehicle"). The moving party has provided the Declaration of Janet Prosser to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Prosser Declaration provides testimony that Debtor has not made payments since on or about October 3, 2015. There is one post-petition payment of $1,202.95 past due. Additionally, there are six pre-petition payments in default, with a pre-petition arrearage of $7,217.70.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $67,670.81, as stated in the Prosser Declaration, while the value of the Vehicle is determined to be $40,000.00, as stated in Schedules B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay 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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Travis Credit Union, 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.

19. 16-20672-B-13 PHILLIP NAILS — MOTION TO VALUE COLLATERAL OF
PGM-1 Peter G. Macaluso — JPMORGAN CHASE BANK, N.A.
3-24-16 [29]

Final Ruling: No appearance at the May 3, 2016, hearing is required.

The Motion to Value Collateral of JPMorgan Chase Bank, N.A. 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 JPMorgan Chase Bank, N.A. at $0.00.

The motion to value filed by Debtor to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4647 Windsong Street, California ("Property"). Debtor seeks to value the Property at a fair market value of $395,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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 the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $482,399.41. Creditor's second deed of trust secures a claim with a balance of approximately $55,300.00. 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.

20. 15-26973-B-13 STEVEN RUTHENBECK
ET-3 Matthew R. Eason

CONTINUED MOTION TO CONFIRM PLAN
2-29-16 [69]

Tentative Ruling: Because feasibility of the plan depends on Debtor Steven Ruthenbeck obtaining funds to pay the plan in full by April 25, 2016, this matter was continued from April 19, 2016, to allow the Debtor to the acquire the funds necessary to fully fund the plan. Confirmation will be denied on May 3, 2016, if at that time the plan has not been fully funded.

The matter will be determined at the scheduled hearing.

21. 16-22377-B-13 PRISCILLA MCMANUS MOTION TO EXTEND AUTOMATIC STAY
MDA-1 Mary D. Anderson 4-18-16 [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 without prejudice 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 November 25, 2015, after Debtor failed to appear at the first meeting of creditors, failed to provide required documents to the Chapter 13 Trustee, and failed to cure delinquency in plan payments (case no. 15-29202, Dkt. 30, 32). 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 does not explain why the previous plan was filed and merely states that she failed to prosecute the previous case because she was not adequately advised as to her rights, responsibilities, and duties. Additionally, although the court recognizes that the previous case was filed pro se and that the Debtor is now represented by an attorney in this case, the Debtor does not explain in either the motion or declaration how her circumstances have changed so that the present plan will 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 without prejudice and the automatic stay is not extended for all purposes and parties.

22. 16-20581-B-13 JPJ-2 | BRODIE STEPHENS
Peter G. Macaluso | OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-21-16 [39]

Tentative Ruling: The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 overrule the objection and allow the exemption.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The Debtor has filed a response stating that the spousal waiver has been filed. The court's review of the docket reveals that the spousal wavier was filed on March 28, 2016. The Trustee's objection is overruled and the claimed exemption is allowed.

23. 14-28782-B-13 EDDIE DANIELS IRVING — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 3-28-16 [65]
Thru #24

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 28, 2016, 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.

Feasibility depends on the granting of a motion to value collateral for Green Tree Servicing, LLC. That motion is granted at Item $24.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

24. 14-28782-B-13 EDDIE DANIELS IRVING — MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC
PGM-2 Peter G. Macaluso — 3-28-16 [70]

Final Ruling: No appearance at the May 3, 2016, hearing is required.

The Motion to Value Collateral of Ditech Financial, LLC 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 Ditech Financial, LLC, fka Green Tree Servicing, LLC, at $0.00.

The motion to value filed by Debtor to value the secured claim of Ditech Financial, LLC, fka Green Tree Servicing, LLC ("Creditor"), is accompanied by the Debtor's declaration. Debtor had entered into a loan agreement with Household Financial Corporation, which sold the loan to Green Tree Servicing, LLC. Dkt. 73, p. 18. Debtor is the owner of the subject real property commonly known as 3092 37th Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $75,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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 the creditor's secured claim (rights and interest in collateral), the 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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4 filed by Green Tree Servicing, LLC is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $110,410.97. Creditor's second deed of trust secures a claim with a balance of approximately $88,367.23. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

25.	15-28282-B-13 PGM-1	RONNALD/DEBORAH WROTEN Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 4-1-16 [33]

Final Ruling: No appearance at the May 3, 2016, 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.

FEES AND COSTS REQUESTED

Peter G. Macaluso ("Applicant") has served as attorney for the Debtors since September 11, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law opted out of the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $7,000.00. Dkt. 32. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation for pre-confirmation work in the amount of $1,455.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 33.

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

Fees	$1,455.00
Costs and Expenses	$ 0.00

26. 16-21082-B-13 SERGIO DE LA CRUZ
RCO-1 Ronald W. Holland

OBJECTION TO CONFIRMATION OF PLAN BY EVERGREEN MONEYSOURCE MORTGAGE COMPANY
3-31-16 [17]

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). A written reply has been filed to the objection.

The court's decision is to overrule the objection.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $6,945.72 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed February 29, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

27. 15-26284-B-13 MORTISHIA FAIRCHILD
CCR-1 Mary Ellen Terranella

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-16 [26]

JULES A. DEGREEF VS.

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 3, 2016, hearing is required.

28. 16-22186-B-13 LARRY THOMAS MOTION TO EXTEND AUTOMATIC STAY
NSV-1 Nima S. Vokshori 4-11-16 [9]

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 grant 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 13, 2016, after the Debtor moved to dismiss the case because he had an expensive car repair in December and could not timely make the December and January plan payments (case no. 15-27901, Dkt. 74, 78). 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 he filed both the previous bankruptcy case and the current case primarily to pay arrears on his first and second mortgage to save his home from foreclosure. The Debtor asserts that he needs the continued protection of the automatic stay to be able to keep his house and his car and for protection against other creditors. Debtor further states that his circumstances have changed because the expensive car repair in the previous case was due to a one-time car accident and he has since surrendered that vehicle and only maintains one motor vehicle.

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

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

29. 15-29588-B-13 BEVERLY BAKER HARRIS
RDW-2 Matthew J. DeCaminada

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY, MOTION FOR ADEQUATE PROTECTION
4-5-16 [42]

TECHNOLOGY CREDIT UNION VS.

Tentative Ruling: The Motion for Relief From Automatic Stay and Co-Debtor 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). A response by the Debtor has been filed.

The court's decision is to deny as moot the motion for relief from stay.

The case was converted to a Chapter 7 on April 29, 2016. The creditor's motion is denied as moot.

30. 12-22391-B-13 ROBERT/FINLEY KELLER — CONTINUED MOTION FOR CONTEMPT
SJS-6 Scott J. Sagaria — 3-9-16 [122]

CONTINUED TO 5/17/16 AT 1:00 P.M.

Final Ruling: No appearance at the May 3, 2016, hearing is required.

31.	13-30892-B-13 PGM-2	JOHN/CHRISTINA HENRICH Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 3-29-16 [38]

Final Ruling: No appearance at the May 3, 2016, 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 October 2, 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. 21. 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 $765.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 38.

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 it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would request permission to enter into a refinance on their real property. 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.

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

Additional Fees	$765.00
Additional Costs and Expenses	$ 0.00

32. 16-21793-B-13 ABU ALAMIN MOTION TO EXTEND AUTOMATIC STAY
MLF-3 Jessica R. Galletta O.S.T.
4-20-16 [33]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

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

This matter relates to the motion to extend automatic stay that was heard on April 12, 2016, and denied without prejudice since the Debtor's bankruptcy case no. 15-27755 was still pending under Judge McManus after being transferred from the Northern District of California for improper venue. Judge McManus has since dismissed the case on April 19, 2016, after Debtor voluntarily moved to dismiss the case in order to file a new Chapter 13 plan. Case no. 15-27755, dkts. 82, 84.

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. 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 states that the previous case was filed in order to reorganize his debts and keep his real property. Debtor asserts that he fell behind on plan payments in the previous case while transferring the case from the Northern District of California for improper venue. The Debtor began making payments on the plan after the case was transferred but was unaware that the first payment was due 30 days after filing of the petition and thus was behind on plan payments. Although the Debtor could afford the plan payments proposed, he could not cure the delinquency, which Debtor asserts resulted from the original venue problem and the delay by Wells Fargo in asserting a claim. Debtor states that his situation has changed because he is prosecuting this case in the correct venue and has sufficient income to fund the proposed plan, which provides for the arrearage that has accrued on his mortgage loan and for payment to general, unsecured creditors.

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

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

33. 16-21299-B-13 LUCIEN WILLIAM
Thru #34 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
4-14-16 [26]

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 deny confirmation of the plan for reasons stated at Item #34.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $12,034.36 in pre-petition arrearages but has not yet filed a proof of claim. The creditor has not filed a proof of claim and provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Although the objection is overruled, the plan filed March 8, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #34. The plan is not confirmed.

34. 16-21299-B-13 LUCIEN WILLIAM
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-13-16 [23]

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

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

First, the Debtor failed to appear at the first meeting of creditors set for April 7, 2016, as well as the continued meeting of creditors set for April 21, 2016. The meeting was subsequently continued to May 5, 2016, to allow the Debtor to be examined under oath.

Second, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release Information as required pursuant to Local Bankr. R. 3015-1(b)(6). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

The plan filed March 8, 2016, 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.