**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

**May 6, 2015 at 10:00 a.m.**

---

| | | | |
|---|---|---|---|
| 1. | 15-21303-B-13<br>JPJ-1 | ROBERT MACKENZIE AND<br>SADHANA JONES<br>Douglas B. Jacobs | OBJECTION TO CONFIRMATION OF<br>PLAN BY JAN P. JOHNSON AND/OR<br>MOTION TO DISMISS CASE<br>4-14-15 [17] |

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtors have filed a written reply to the Trustee's objection.

The court's decision is to overrule the Objection as moot and conditionally deny the Motion to Dismiss.

The Debtors have filed a new Chapter 13 plan after being granted a modification to their home loan. The motion to confirm the new plan is set for June 3, 2015. By filing an amended plan, the Debtors agree that the prior plan, set for confirmation at this hearing, is not suitable for confirmation.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled as moot, the Debtors having withdrawn their plan, and the plan is not confirmed.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.

2. 15-21405-B-13 THOMAS HURST
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-14-15 [22]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtors have filed a written reply to the Trustee's objection.

The court's decision is to continue the Objection and the Motion to Dismiss.

Debtor's meeting of creditors has been continued from April 9, 2015, to May 14, 2015. Because the Chapter 13 trustee cannot recommend confirmation of a plan prior to a thorough examination of the Debtor under oath, the confirmation hearing will be continued to May 20, 2015 at 10:00 a.m.

The Objection and the Motion to Dismiss are continued.

3. 15-22005-B-13 RICHARD/TERESA BRACCO — MOTION TO VALUE COLLATERAL OF
WW-2 Mark A. Wolff — ARAN INVESTMENT, INC.
4-17-15 [23]

**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 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Value secured claim of Aran Investment, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Richard Bracco and Teresa Bracco ("Debtors") to value the secured claim of Aran Investment, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 624 Lassen Way, Roseville, California ("Property"). Debtor seeks to value the Property at a fair market value of $205,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The first deed of trust secures a claim with a balance of approximately $215,567.00. Creditor's second deed of trust secures a claim with a balance of approximately $15,358.00. 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.

4. 15-21307-B-13 TERRENCE/KAREN LOVE — MOTION TO CONFIRM PLAN
SJS-1 Scott J. Sagaria — 3-17-15 [27]

CASE DISMISSED 4/6/15

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

5. 13-23313-B-13 JENNIFER JOHNSON — MOTION TO APPROVE LOAN MODIFICATION
WW-3 Mark A. Wolff — 4-14-15 [46]

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

The Motion to Approve the Loan Modification is granted.

The Motion to Approve Loan Modification filed by Jennifer Johnson ("Debtor") seeks court approval to incur post-petition credit. Seterus and Federal National Mortgage Association ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. At the time this case was filed, the loan repayment terms were interest only. Due to change in the interest rate and amortization of the loan, which occurred October 2014, Debtor's payments are increasing. Without the changes in the loan pursuant to the loan modification, Debtor's ongoing monthly payment will increase to $2,175.92. Under the proposed loan modification, Debtor's monthly payment including escrow will be $1,972.06 and the fixed interest rate will be 4.625%. With the loan modification, Debtor will be able to retain her residence. Debtor has also provided supplemental Schedules I and J to show that she will be able to afford the new payments (Dkt. 49).

The Motion is supported by the Declaration of Jennifer 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 to Approve the Loan Modification is granted.

6. 14-31614-B-13 JAMES DEMERIN
AF-1 Arasto Farsad
MOTION TO CONFIRM PLAN
3-12-15 [37]
**Thru #7**

CASE DISMISSED 3/19/15

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

The Motion to Confirm the Amended Plan is denied as moot as this case was dismiss on March 19, 2015, and the court has denied the Debtor's request to vacate the order of dismissal per Item #7. But, independent of dismissal, the amended plan itself is not confirmable for at least three reasons:

(i) the Debtor has not made any payments to the Trustee since January 29, 2015, and is delinquent in the amount of $1,595.86 (and possibly an additional $875.00 at the time of hearing), the Trustee states that the Debtor's statement that he mailed in payments is false, and there is no showing that the amended plan complies with 11 U.S.C. § 1325(a)(6);

(ii) the amended plan violates 11 U.S.C. §§ 1322(b)(2) and 1325(a)(1) in the absence of any payment to the Debtor's secured creditor; and

(iii) the Debtor has not produced any evidence that its lender has approved or consented to a loan modification and, at best, states that the lender will conduct a good faith review to determine if modification is appropriate.

With respect to the latter, the Debtor has not provided the Trustee or the court with its referenced settlement agreement and states only that the court can compel production of that agreement. The burden, however, is on the Debtor to produce evidence, not on the court to compel it. There are procedures under the local and federal rules for the submission of confidential material with which the Debtor has not complied. In short, even if this case was not dismissed, the amended plan proposed by the Debtor is not confirmable.

7. 14-31614-B-13 JAMES DEMERIN
AF-2 Arasto Farsad
MOTION TO VACATE DISMISSAL OF CASE
3-31-15 [48]

CASE DISMISSED 3/19/15

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

The motion to vacate is denied.

Federal Rule of Civil Procedure 60, incorporated here through Fed. R. Bankr. P. 7024, provides that the court can grant relief from an order for various reasons, including mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1).

Here, Debtor argues that mistake justifies the court vacating the order dismissing the case. Debtor asserts that the delay in prosecuting this case was due to Debtor's counsel. Debtor's counsel was representing the Debtor in litigation directly related to the treatment of Debtor's primary mortgage with Wells Fargo Bank, N.A. *James A. Demerin v. Wells Fargo Bank, N.A.,* Case No. 2:14-cv-02879-JAM. The case finally settled on March 12, 2015. Debtor's counsel mistakenly believed that the delay would not result in dismissal of the case.

After the case settled, Debtor's plan was amended to specify the treatment of the primary secured claim in this case, *i.e.*, Wells Fargo Bank, N.A. Debtor asserts that, per the settlement agreement, the Debtor will now be reviewed for a loan modification and that no adequate protection payments are required of the Debtor during the review period.

Despite the fact that the Debtor has filed an amended plan, and even if the court were to find excusable neglect, the proposed plan is not confirmable for reasons stated in Item #6. As such, the court will not vacate the dismissal of the Debtor's case when doing so would be a futile act due to the Debtor's inability to confirm an amended plan.

8. 10-20517-B-13 MARGIT LAROT MOTION TO INCUR DEBT
MET-2 Mary Ellen Terranella 4-22-15 [47]

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

The Motion to Incur Debt is granted.

Margit Larot ("Debtor") seeks approval for a FHA refinance of her mortgage loan on her residence, located at 260 Pamela Court, Vallejo California through Summit Funding, Inc. ("Lender"). The principal, interest, monthly escrow payment, and FHA mortgage insurance payment is $823.32. This represents $1,160.68 reduction in the Debtor's monthly mortgage payment.

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 loan refinance, 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.

9. 14-25817-B-13 SHANE WELLS MOTION TO MODIFY PLAN
BLG-2 Bruce Charles Dwiggins 3-27-15 [41]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 27, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

10. 15-21317-B-13 EDUARDO MORALES
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-8-15 [27]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Chapter 13 trustee is unable to determine if Debtor's business is solvent and necessary for reorganization because the Debtor has not provided the trustee with copies of certain items including, but not limited to, bank account statements for the six-month period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521.

Second, the Debtor has not amended Schedules I and J to reflect his current income. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtor has not provided the trustee with a Class 1 Checklist. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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

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

11. 14-25625-B-13 DOUGLAS THURSTON
CK-9 Pro Se
**Thru #12**

OBJECTION TO CLAIM OF SHEILA FOLEY GILDEA, CLAIM NUMBER 6
4-1-15 [64]

**Tentative Ruling:** The objection to proof of claim has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44-days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The Objection to Proof of Claim Number 6 of Sheila Foley Gildea is sustained.

Douglas Thurston, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Sheila Foley Gildea ("Creditor"), Proof of Claim No. 6 ("Claim"). The Claim is asserted to be secured in the amount of $42,088.56.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). 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).

Objector asserts that the claim should be disallowed because the claim was not timely filed. See Fed. R. Bankr. P. 3002(c). The last day to file a Proof of Claim in this case was October 8, 2014. However, Creditor's Proof of Claim was filed on October 24, 2014. Additionally, Objector asserts that the judicial lien attached to the Proof of Claim was recorded in the County of Shasta, but the county in which the Debtor's real property is located is Tehama County.

Objector has, therefore, satisfied his burden of overcoming the presumptive validity of the Claim.

Response by Creditor

Creditor acknowledges that its proof of claim in this case was not timely filed. However, Creditor cites to *In re Harper*, 138 B.R. 229 (Bankr. N.D. Ind. 1991) to urge the court to allow its proof of claim to be amended so that the untimely filed proof of claim relates back to the previously filed claim in Debtor's previous bankruptcy case (Case No. 12-41236) (see Dkt. 76, p. 6). Both the BAP and the Ninth Circuit have held that informal writing may be construed as a proof of claim if the writing is filed within the time for filing claims in the case. *Perry v. Certificate Holders of Thrift Sav.*, 320 F.2d 584, 590 (9th Cir. 1963); *Pac. Resource Credit Union v. Fish (In re Fish)*, 456 B.R. 413, 417 (9th Cir. BAP 2011). The problem with Creditor's position is that the writing it asks the court to construe as an informal proof of claim was filed *before* this case was commenced and, thus, was not filed within the time for filing proofs of claim in this case.

Based on the evidence before the court, the Debtor's objection is sustained on the basis that the Proof of Claim was not timely filed and the Proof of Claim is disallowed.

12. 14-25625-B-13 DOUGLAS THURSTON MOTION TO RECONSIDER
DMB-1 Pro Se 4-17-15 [72]

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

The Motion to Reconsider is granted for reasons stated below.

The court's April 15, 2015, at 10:00 a.m. pre-hearing disposition incorrectly stated that Item #6 Motion to Avoid Lien of Sheila Foley Gildea to be a (f)(1)-final ruling. It should have been a (f)(2)-tentative ruling since only 18 days' notice was given.

Due to Item #6 being listed as a final ruling, Creditor's attorney states that Court Call sent his office an email canceling his appearance and that he had learned of this cancellation the morning of the hearing on April 15, 2015, at 9:35 a.m. (Brady Declaration, Dkt. 74). Creditor's attorney tried to reinstate the item on calendar but could not do so. Creditor's attorney was told by the clerk's office that he had to file a motion to reconsider.

Due to the court's error and Court Call's phone cancellation, the court will grant the Motion to Reconsider. The order of April 15, 2015, avoiding Creditor's lien (Dkt. 71) is vacated. The judgment lien of Sheila Foley Gildea, California Superior Court for Tehama County Case No. 63525, recorded on April 2, 2012, with the Shasta County Recorder, against the real property commonly known as 19290 Eighmy Road, Cottonwood, California, is not avoided.

13. 15-23126-B-13 TAMARA MURRAY — MOTION TO EXTEND AUTOMATIC STAY
MRL-1 Mikalah R. Liviakis — 4-21-15 [10]

**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 Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The Motion to Extend the Automatic Stay is denied.

Tamara Murray ("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 (No. 14-31450) was dismissed on March 19, 2015, because Debtor did not complete her credit counseling course, the Debtor failed to comply with confirmation procedure, and the Debtor was delinquent in payment to the Trustee (Dkts. 40 and 42). 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 filed 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, in this new case, she has filed a pre-petition certificate of counseling (Dkt. 1, p. 6). Debtor asserts that the main error in her previous case has been fixed and she now should be able to progress through the bankruptcy process. However, the Debtor has provided no explanation on justification for her failure to comply with confirmation procedure or her delinquency in payment to the Trustee.

The Debtor has not sufficiently rebutted 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.

14. 09-44927-B-13 VINCENT/YOLANDA MARTINEZ — MOTION FOR SUBSTITUTION AND SUGGESTION OF DEATH
BLG-2 Pauldeep Bains — 4-1-15 [73]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

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

The Motion for Substitution and Suggestion of Death is granted.

Debtor Vincent Emil Martinez gives notice of death of his wife and Co-Debtor Yolanda Valdez Martinez and requests the court substitute Vincent Emil Martinez in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal

> Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

*See also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the Debtor. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the Motion to Substitute Party.

15. 13-20742-B-13 JOSE/MILAGROS SARIBAY
CJO-1 H. Jayne Ahn

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-31-15 [28]

GREEN TREE SERVICING, LLC
VS.

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

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

The Motion for Relief From the Automatic Stay and the Co-Debtor Stay is granted.

Green Tree Servicing, LLC("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 368 Kawailani Street, Apt. A, Hilo, Hawaii (the "Property"). Movant has provided the Declaration of Brittany Droppers ("Droppers Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Droppers Declaration states that there are 26 post-petition defaults, with a total of $47,371.17 in post-petition payments past due. Additionally, there are 42 pre-petition payments in default, with a total of $66,604.44 in pre-petition payments past due.

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

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

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

No other or additional relief is granted by the court.

16. 15-20442-B-13 JAMES SISEMORE
JPJ-2 C. Anthony Hughes

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-24-15 [31]

**Tentative Ruling:** The Objection to Exemptions has been set for hearing on 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 objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

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). Debtor has filed an untimely written opposition on April 28, 2015, stating that he is in the process of getting a signed spousal waiver filed with the court. The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

17. 11-28943-B-13 DEBBY NAIMAN — MOTION TO MODIFY PLAN
JSS-2 John S. Sargetis — 3-24-15 [63]

**Thru #18**

**Tentative Ruling:** The Motion to Confirm the 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 Motion to Confirm the Modified Plan is conditionally granted.

The post-confirmation modified plan filed on March 24, 2015, proposes to change the percentage rate of Class 7 general unsecured creditors from 47.51% to 35.42%. However, the trustee has already paid 47.51%, which is $26,946.96 to general unsecured creditors in accordance with the previously confirmed plan and the timely filed and allowed proof of claims.

As such, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed on the condition that the percentage to unsecured creditors be adjusted to the extent of what has been already disbursed by the trustee in accordance with the previously confirmed plan and timely filed claims, which is no less than 47.51% to general unsecured creditors.

18. 11-28943-B-13 DEBBY NAIMAN — MOTION FOR COMPENSATION BY THE LAW OFFICE OF UNITED LAW CENTER FOR JOHN SARGETIS, DEBTOR'S ATTORNEY(S)
JSS-3 John S. Sargetis — 3-25-15 [68]

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

The Motion for Allowance of Additional Fees is granted in part.

As part of confirmation of the Debtor's Chapter 13 plan, the United Law Center ("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 $3,500.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation (Dkt. 19). The debtor's attorney now seeks additional compensation, in the amount of $4,289.00 in fees and $51.83 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 71).

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation 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 here does address the foregoing standard. The fees sought are for two motions to modify Chapter 13 plan, which were commenced after the date of the confirmation of the original plan filed on April 11, 2011. The services provided by the applicant benefitted the Debtor and the estate, specifically:

> (1) The Motion to Modify Chapter 13 Plan filed on October 17, 2011, benefitted the Debtor as it lowered her plan payment to provide her with more room for household expenditures, accounted for a reduction in her monthly income, and provided for an adjustment to the Class 1 claim of Bank of America. The estate likewise benefitted from this motion as it provided a 47.51% distribution to her unsecured creditors compared to a 0.00% dividend in the original plan.
>
> (2) The Motion to Modify Chapter 13 Plan filed on March 24, 2015, will benefit the Debtor by modifying her plan payment to account for a change in her monthly income, a change in her monthly expenditures, and account for a default in her plan payments. The estate will likewise benefit from this motion, as it will allow the Debtor to remain in her Chapter 13 bankruptcy.

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 will not award attorney's fees for "non-legal communications . . . by non-attorneys [and] non-legal interoffice communications," which total 6.8 hours. The court will therefore reduce counsel's request by $578.00, which is 6.8 hours at $85.00/hour.

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

| | |
|---|---|
| Fees | $3,711.00 |
| Costs and Expenses | $51.83 |

19. 14-32047-B-13 LE AIRHEART MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 3-25-15 [41]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 25, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

20. 14-30057-B-13 ANDREW HANZO
Tien D. Duong

MOTION TO CONFIRM PLAN
3-11-15 [84]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 9, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

21. 10-44061-B-13 MICHAEL/JEANNE CAREY MOTION TO MODIFY PLAN
PLG-6 Steven A. Alpert 3-27-15 [119]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits debtors 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 27, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

22. 14-32364-B-13 MICHAEL/PAULA RHOADES
JPJ-2 Peter L. Cianchetta

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
3-26-15 [45]

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

The Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case is continued to June 10, 2015, to be heard in conjunction with Debtors' Motion to Confirm Amended Plan.

Michael Rhoades and Paula Rhoades ("Debtors") have filed a response to Chapter 13 Trustee's motion stating that they are now current on plan payments, have filed an amended plan, and assert that the amended plan will pay 100% to all creditors, secured and unsecured.

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

The Bankruptcy Code Provides:

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

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

It cannot yet be determined whether cause exists to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c). The motion is continued to June 10, 2015, to be heard in conjunction with Debtors' Motion to Confirm Amended Plan.

| | | | |
|---|---|---|---|
| 23. | 11-36873-B-13<br>RAC-2 | MARTY SHIRO<br>Richard A. Chan | MOTION TO APPROVE LOAN MODIFICATION<br>4-7-15 [36] |

**Final Ruling**: No appearance at the May 6, 2015 hearing is required.
CONTINUED TO 5/11/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

24. 15-20674-B-13 APRIL WARD MOTION TO CONFIRM PLAN
AAM-1 Andrew A. Moher 3-7-15 [20]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors, and it appears that the Trustee's objections to confirmation relate to the plan that was filed on January 30, 2015, and not the current amended plan under consideration filed March 4, 2015. The amended plan filed March 4, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

25. 15-20777-B-13 GG-1 **Thru #26**

ELIZABETH HUBER
Gerald B. Glazer

MOTION TO VALUE COLLATERAL OF BENEFICIAL CALIFORNIA, INC./BENEFICIAL FINANCIAL I, INC.
3-9-15 [16]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

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

The Motion to Value secured claim of Beneficial California, Inc./Beneficial Financial I, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Elizabeth Huber ("Debtor") to value the secured claim of Beneficial California, Inc./Beneficial Financial I, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 900 Cobble Shores Drive, California ("Property"). Debtor seeks to value the Property at a fair market value of $422,149.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The first deed of trust secures a claim with a balance of approximately $526,487.45.

Creditor's second deed of trust secures a claim with a balance of approximately $35,000.00. 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.

| | | | |
|---|---|---|---|
| 26. | 15-20777-B-13<br>JPJ-1 | ELIZABETH HUBER<br>Gerald B. Glazer | CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE<br>3-11-15 [28] |

**Tentative Ruling:** The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection in part and overrule the Objection in part, and conditionally deny the Motion to Dismiss.

The Objection is sustained on the grounds that the Debtor has not provided proof of her social security number to the Chapter 13 Trustee at the meeting of creditors as required under Fed. R. Bankr. P. 4002 (b)(1)(B).

However, the Trustee's objection on the grounds that feasibility depends on the granting of a motion to value collateral is overruled moot. As determined under Item #25, Creditor Beneficial California, Inc./Beneficial Financial I, Inc.'s claim secured by a junior deed of trust is completely under-collateralized. Thus, Creditor's secured claim is determined to be in the amount of $0.00. This, in effect, eliminates the Trustee's objection to confirmation with regard to feasibility.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and overruled in part 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.

27. 15-21677-B-13 EDWARD BROWN
JPJ-1 Gary Ray Fraley
**Thru #28**

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-8-15 [25]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

The plan will take approximately 78 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

28. 15-21677-B-13 EDWARD BROWN
PD-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF PLAN BY MATRIX FINANCIAL SERVICES CORPORATION
3-20-15 [15]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection.

First, the Debtor's plan does not provide for the full value of Matrix Financial Services Corporation's claim. Pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii), a debtor is required to distribute at least the allowed amount of a creditor's secured claim.

Second, the Debtor's plan does not cure Matrix Financial Services Corporation's pre-petition arrears pursuant to 11 U.S.C. § 1322(b)(5). Creditor's secured claim consists of $4,864.21 in pre-petition arrears, which is not provided for in Debtor's plan. Debtor will have to increase his monthly payment through the Chapter 12 plan to Creditor in order to cure Creditor's pre-petition arrears over a period not to exceed 60 months.

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

Because the Plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan

within 75 days, the case will be dismissed on the Trustee's ex parte application.

29. 15-21278-B-13 DOROTHY GUINANE
SDB-1 W. Scott de Bie

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
3-13-15 [15]

**Final Ruling:** The Motion to Value has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted.

The Motion to Value filed by Dorothy Guinane ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1105 Taylor Avenue, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $150,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

**OPPOSITION**

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

In its reply to the Creditor's opposition, the Debtor has provided an appraisal of the subject property conducted by Richard Straub, a certified appraiser (Dkt. 40, Exh. D). Mr. Straub's appraisal of the property is $150,000.00 and supports the Debtor's

estimated value.

At the April 15, 2015, hearing on the motion to value, the Creditor requested additional time to obtain its own appraiser to value the property. As of May 4, 2015, the Creditor has not provided the court with any appraisal of the subject property.

**DISCUSSION**

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted.

30. 15-21781-B-13 JASON/SHELLY BELOTTI
JPJ-1 Richard D. Steffan

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-8-15 [24]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, it cannot be determined how the Debtors propose to treat the claim of Loan Depot since it is listed in both Class 1 and Class 2. Regardless, the placement of Loan Depot in Class 2 is mis-classified since it holds a first deed of trust on Debtors' principal residence. Debtors may not modify the rights of a holder of a claim secured only be a security interest in real property that is Debtors' principal residence. Section 2.09(c)(2).

Second, the payment plan in the amount of $2,200.00 does not equal the aggregate of the trustee's fees, monthly contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends for Class 1 arrearage claims and/or Class 2 Secured claims as required pursuant to Section 5.02 of the form plan. The aggregate of monthly amounts plus the trustee's fee is $4,080.89.

Third, feasibility of the plan depends on the granting of a motion to value collateral for Travis Credit Union. The Debtor has not filed, set for hearing, or served the respondent creditor and the trustee a stand-alone motion to value the collateral. Local Bankr. R. 3015-1(j).

Fourth, the Debtors have not amended Schedule J to add their dependent child. The Debtors have not cooperated with the trustee as necessary to enable the trustee to perform his duties. 11 U.S.C. § 521(a)(3).

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

Because the Plan is not confirmable, the 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.

31. 15-21785-B-13 JOYCE ORTEGA
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-8-15 [18]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Chapter 13 plan is incomplete because the Debtor and the Debtor's attorney have not signed the plan that was filed on March 6, 2015.

Second, the Debtor has not provided the trustee with certain items requested including, but not limited to, a completed business examination checklist and bank account statements for the six-month period prior to filing the petition. The trustee is unable to determine if the business is solvent and necessary for reorganization. The debtor has not complied with 11 U.S.C. § 521.

Third, 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 from her other source of income for private care giving services that is listed at Line 8h of Schedule I. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses. Feasibility of the plan cannot be fully assessed.

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

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

| | | | |
|---|---|---|---|
| 32. | 15-20788-B-13<br>BHT-1 | DANIEL MIRANDA<br>Michael O'Dowd Hays | OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC<br>4-1-15 [27] |

**Final Ruling**: No appearance at the May 6, 2015 hearing is required.
CONTINUED TO 5/11/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

| | | | |
|---|---|---|---|
| 33. | 15-20089-B-13<br>SNM-1 | MARTHA ROCHA<br>Stephen N. Murphy | CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY<br>2-20-15 [14] |

**Tentative Ruling:** The court issues no tentative ruling.

The Motion for Sanctions for Violation of the Automatic Stay 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 and will issue a chamber's order.

34. 14-31990-B-13 DEBRA WARD MOTION TO CONFIRM PLAN
SJS-1 Scott M. Johnson 3-17-15 [18]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed March 17, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

35. 14-32190-B-13 JUAN/PATRICIA VIGIL MOTION TO CONFIRM PLAN
MB-2 Mario Blanco 3-18-15 [29]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

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 18, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

36. 15-20391-B-13 ESMERELDA WYMORE MOTION TO CONFIRM PLAN
HLG-1 Brunella M. Palomino 3-23-15 [31]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,820.00, which presents approximately 2 plan payments. By the time this motion is heard, an additional plan payment in the amount of $1,410.00 will also be due. The Debtor has not made any plan payments since the filing of the petition, which was on January 20, 2015. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has not provided the trustee with a Class 1 Checklist and Authorization to Release Information. Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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

37. 15-21694-B-13 LENZA GRUNDMAN
JPJ-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-14-15 [14]

**Tentative Ruling:** The Objection to 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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the payment plan in the amount of $2,655.00 does not equal the aggregate of the trustee's fees, monthly contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends for Class 1 arrearage claims and/or Class 2 Secured claims as required pursuant to Section 5.02 of the form plan. The aggregate of monthly amounts plus the trustee's fee is $2,981.00.

Second, the Debtor has not amended Schedules I and J to show her new income and expenses, and has not provided pay advices from her new employment. The debtor has not cooperated with the trustee and the trustee cannot perform his duties. The debtor has not complied with 11 U.S.C. § 521(a)(3).

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

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

38. 15-20996-B-13 WARREN DITTMAR MOTION TO CONFIRM PLAN
SDB-1 W. Scott de Bie 3-19-15 [22]

**Final Ruling:** No appearance at the May 6, 2015 hearing is required.

The Motion to Confirm the Amended 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 Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 19, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.