UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 13, 2015 at 10:00 a.m.

1.	15-22005-B-13 JPJ-1	RICHARD/TERESA BRACCO Mark A. Wolff	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-23-15 [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 overrule the Objection and deny the Motion to Dismiss.

The Chapter 13 Trustee objected to confirmation of the plan filed March 16, 2015, on the ground that feasibility depends on the granting of a motion to value collateral of Rampant Capital for a second deed of trust on Debtors' residence. The motion to value was heard on May 6, 2015, and granted in favor of the Debtors. This, therefore, resolves the Trustee's objection to confirmation.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled and the Plan is confirmed.

2. 15-21906-B-13 DARNELLA JONES
JPJ-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON 4-22-15 [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). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection.

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

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

Third, the Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180 day period preceding the date of the filing of the petition pursuant to 11 U.S.C. § 109(h).

Fourth, the Debtor has failed to carry her burden of showing that the plan filed March 11, 2015, complies with 11 U.S.C. § 1325(a)(6). The Debtor's proposed monthly plan payment of $1,000.00 exceeds the Debtor's available income by $41.00. Additionally, the Debtor lists the ongoing mortgage payment in Class 1 of the plan as well as on Schedule J of the petition. Until the Schedule is amended to remove this expense, feasibility of the plan filed March 11, 2015 cannot be properly assessed. 11 U.S.C. § 1325(a)(6).

Fifth, the plan payment in the amount of $1,000.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of monthly dividends and the Trustee's fees is $2,124.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Sixth, the plan filed March 11, 2015, will take approximately 601 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).

Seventh, the Debtor has not amended the Statement of Financial Affairs questions #1 and #2 to include a list of her earned income from 2013, 2014, and 2015.

Eight, the plan does not specify a minimum dividend to Class 7 general unsecured creditors. The plan further specifies that Additional Provisions are attached to the plan; however, no such attachment was filed with the plan.

Ninth, the Statement of Current Monthly Income (Means Test) was filed on the incorrect Form 22C. The new form went into effect on December 1, 2014; however, the Debtor used the form that was effective of April 1, 2013.

Tenth, the plan filed March 11, 2015, does not comply with 11 U.S.C. § 1325(a)(4) because the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Additionally, the Debtor lists two properties on Schedule A of the petition that may have non-exempt equity in the cumulative amount of $492,095.55.

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.

3. 15-21314-B-13 NICOLE GRANDY MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 4-29-15 [32]

Tentative Ruling: The Motion to Confirm the Amended Plan has not 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). Only 14 days' notice was provided.

The Motion to Confirm the Plan is denied without prejudice.

4. 15-21714-B-13 JPJ-1 — ANDRE/VONETTA HUDDLESTON, Gary Ray Fraley — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-23-15 [21]

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 plan filed March 18, 2015, does not comply with 11 U.S.C. § 1325(a)(6). The Debtors do not provide an explanation for the increased play payment in month 7 through 60 or for how they intended to fund the increased payment.

Second, the plan payment of $1,990.00 for months 1 through 6 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payment on account of Class 1 arrearage claims. The aggregate of monthly amounts plus the Trustee's fees is $2,634.00. The plan filed March 18, 2015, does not comply with Section 4.02 of the mandatory form plan.

Third, the plan payment of $2,727.95 for months 7 through 60 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payment on account of Class 1 arrearage claims. The aggregate of monthly amounts plus the Trustee's fees is $3,166.00. The plan filed March 18, 2015, does not comply with Section 4.02 of the mandatory form plan.

Fourth, the Debtors have not provided the Trustee with bank statements and statements from the agencies related to the Debtors' income received from Cash Aid, Cal Fresh, and California State Disability for the 60-day period preceding the filing of the case. The Debtors have not complied with 11 U.S.C. § 521(a).

Fifth, the Debtors have not provided the Trustee with a copy of the complaint of an active workers compensation lawsuit. Debtors have not complied with 11 U.S.C. § 521(a)(3).

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

Seventh, the claim of Sacramento County is misclassified as a Class 2C claim. Thus, feasibility of the plan cannot be determined pursuant to 11 U.S.C. § 1325(a)(6).

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.

5.	15-21818-B-13 JPJ-1	DONIA WILLIAMS Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-23-15 [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). No written reply has been filed to the Trustee's objection.

The court's decision is to continue the Objection and Motion ot Dismiss, along with the confirmation hearing, to June 3, 2015, at 10:00 a.m.

The Debtors must file their tax returns of the last 4 years and provide the Trustee with copies of the returns by May 28, 2015, which is the date of the continued meeting of creditors. Since the Trustee cannot assess feasibility of the plan or determine whether the plan has been proposed in good faith until the Trustee has had an opportunity to review Debtor's tax returns, the confirmation hearing will be continued to June 3, 2015 at 10:00 a.m.

All above matters are continued to June 3, 2015, at 10:00 a.m.

6. 15-22123-B-13 ANTHONY/DEBORAH MORALES MOTION TO VALUE COLLATERAL OF
GG-1 Gerald B. Glazer TRAVIS CREDIT UNION
Thru #8 4-1-15 [14]

Tentative Ruling: The Motion to Value secured claim 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 Value secured claim of Travis Credit Union ("Creditor") is denied without prejudice.

The Motion filed by Anthony Morales and Deborah Morales ("Debtors") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a 2006 Honda CR-V ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $5,314.00 as of the petition filing date. Debtors utilize their personal opinion and the Kelley Blue Book to value the Vehicle. As the owner, the Debtors' 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 lien on the Vehicle's title secures a purchase-money loan incurred in February 16, 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 $12,680.98 according to the Debtors.

In response, the Creditor objects to Debtors' valuation of the Vehicle and instead values the Vehicle at a replacement value of $11,522.00 also based on the Kelley Blue Book. Creditor states that the Debtors' Kelly Blue Book valuation provides the "private party value" rather than the value based upon what a retail merchant would charge for the Vehicle.

The Debtors respond to the Creditor's opposition by stating that the Kelley Blue Book might not be a reliable indication of the Vehicle's value, despite having also utilized the Kelley Blue Book in their original motion.

As the plan proponent, the burden is on the Debtor to establish value. 11 U.S.C. § 506(a)(2) requires a starting point of "replacement value" which, at a minimum in this case, is "the price a retail merchant would charge." Inasmuch as the Debtors rely on "private party value," the Debtors have not even met the threshold of § 506(a)(2).

Creditor's opposition is sustained and the motion to value is denied without prejudice.

7. 15-22123-B-13 ANTHONY/DEBORAH MORALES — AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Gerald B. Glazer — 4-27-15 [30]

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 Amended Objection.

First, the plan payment in the amount of $850.00 for months 1 through 9 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fees is $854.00. The plan filed March 17, 2015, does not comply with Section 4.02 of the mandatory form plan.

Second, the court has denied the Debtor's motion to value as stated in Item #6.

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.

8. 15-22123-B-13 ANTHONY/DEBORAH MORALES — AMENDED MOTION TO DISMISS CASE
JPJ-1 Gerald B. Glazer — 4-27-15 [30]

Tentative Ruling: The motion will be conditionally denied.

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.

9. 15-22030-B-13 ROBERT ROGERS
JHW-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC
4-15-15 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 13, 2015 hearing is required.

TD Auto Finance, LLC having filed a Withdrawal of the Objection to Confirmation, the Objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objections to the plan filed March 15, 2015, the court finds that the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Plan is confirmed.

10. 15-22236-B-13 ELAINE BROWN
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-23-15 [19]

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 Debtor has not provided the Chapter 13 Trustee with evidence of her social security number. Until the meeting of creditors is concluded on May 7, 2015, the Trustee cannot recommend confirmation of the plan prior to a thorough examination of the Debtor under oath. 11 U.S.C. § 343.

Second, feasibility of the plan filed March 20, 2015, depends on the granting of a motion to value collateral of Consumer Portfolio Services for a 2006 Honda Civic LX. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral. Local Bankr. R. 3015-1(j).

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. 14-21240-B-13 DIANE OHARA
PGM-4 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
4-9-15 [86]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Diane Ohara ("Debtor") seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The Debtor is making trial loan modification payments for March 2015 through May 2015 and, upon completion, has been offered a permanent loan modification. The loan payments will be $1,265.91 per month at 3.250%. Debtor will make this payment for a total of 260 months. The modification does not affect the distribution to unsecured creditors, who were originally to be paid no less than 0.00% in the original Chapter 13 plan, and does not have a direct impact on the estate, Chapter 13 Trustee, or any discharge that the Debtor may receive.

The Motion is supported by the Declaration of Diane Ohara. 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.

12. 14-27541-B-13 JAMES TEETERS
JPJ-1 Peter L. Cianchetta

MOTION TO RECONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
4-10-15 [61]

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

The Motion to Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 will be determined at the scheduled hearing, at which time oral argument is to be presented and 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.

This Motion to Reconvert the Chapter 13 bankruptcy case of James Teeters ("Debtor") has been filed by Jan Johnson ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be reconverted based on the grounds that the Debtor has not filed a standard Chapter 13 Form Plan or Chapter 13 Statement of Current Monthly Income and Disposable Income Calculation within 14 days of the conversion to a Chapter 13 case pursuant to 11 U.S.C. § 521(a)(1) and Local Bankr. R. 3015-1(c)(1). Without the Chapter 13 plan and Form 22C-1, the feasibility of the case cannot be determined pursuant to 11 U.S.C. § 1325(a)(6) or whether the plan would be in compliance with 11 U.S.C. § 1325(a)(4).

However, it appears that the Debtor has filed the requested documents on April 18, 2015, which may resolve the Trustee's reasons for reconverting the case to one under Chapter 7.

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).

The court will hear oral argument at the scheduled hearing to determine whether cause exists to reconvert this case pursuant to 11 U.S.C. § 1307(c).

13. 15-20843-B-13 KEVIN NELSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
ERG-1 Scott J. Sagaria — 4-14-15 [34]

PATRICK BULMER VS.

Final Ruling: No appearance at the May 13, 2015 hearing is required.

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

The Motion for Relief From the Automatic Stay is continued to May 27, 2015, at 10:00 a.m. to be heard in conjunction with the Chapter 13 Trustee's Motion to Dismiss Case.

Patrick Bulmer ("Movant"), the court-appointed receiver for Service Outlet, a California corporation ("Service Outlet"), seeks relief from the automatic stay in order to allow *In re marriage of Nelson*, Placer County Superior Court case no. SDR-004132 ("Dissolution Action") to be concluded. The moving party has provided the Declaration of Patrick Bulmer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bulmer Declaration states that the Debtor holds a 50% interest in the insolvent corporation Service Outlet, an auto repair shop located at 7401 Galilee Road #150, Roseville, California. Movant was appointed in the dissolution action to liquidate assets and to further pay support to Debtor's ex-spouse from proceeds of the liquidation, if any.

No parties have filed opposition to the motion to date.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. *See Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court treats the May 13, 2015, hearing as a preliminary hearing and orders the stay to remain in effect until the May 27, 2015, final hearing date. If this case is dismissed on May 27, 2015, this motion will be rendered moot. If the case is not dismissed, the court will take up this motion and render a decision at that time. The matter will be continued to May 27, 2015, at 10:00 a.m. to be heard in conjunction with the Chapter 13 Trustee's Motion to Dismiss Case.

No other or additional relief is granted by the court.

14. 13-35347-B-13 ANGEL/KARINA GARCIA MOTION TO MODIFY PLAN
RJ-4 Richard L. Jare 4-2-15 [93]

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 denied without prejudice.

First, the plan filed March 31, 2015, does not specify a cure of the post-petition arrearage due to Bank of America including a specific post-petition arrearage amount, increased rate, and monthly dividend.

Second, Section 1.02 of the plan filed March 31, 2015, states that the Debtors will make a one-time payment of $230.00 after entry of the Order approving this modified plan. Although the Debtors initially did not specify the month on which the Trustee can expect to receive this payment, Debtors have stated in their response (Dkt. 119) that payment can be made on May 25, 2015, or June 25, 2015.

Third, feasibility cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6). The plan filed March 31, 2015, does not properly account for all payments the Debtors have paid to the Trustee to date.

Fourth, the Debtors' amended Schedules filed on April 2, 2015 (Dkt. 102), reflects that their current monthly net income is $1,050.00. This does not support Debtors' assertion that they can pay $1,085.00 per month at this time (Declaration of Karina Garcia, Dkt. 98).

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

15. 14-23347-B-13 AARON/THERESA PELICAN MOTION TO INCUR DEBT
MRL-1 Mikalah R. Liviakis 4-28-15 [42]

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.

The motion seeks permission to purchase a 2015 Honda Civic SE Sedan, the total purchase price of which is $20,550.00, with monthly payments of $380.48. Debtors will finance the purchase by taking out a 401(k) loan. Debtors desire to acquire the vehicle because the term on the vehicle Debtors were leasing through American Honda Finance expired. Therefore, Debtors are in need of a new vehicle. Furthermore, since the lease payment was $657.40 per month (Dkt. 9, p. 4), taking out this loan will not detrimentally affect the plan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

16. 13-20048-B-13 SDB-2 — ALLEN HEROD AND MARCIE GRADWOHL — W. Scott de Bie — MOTION TO MODIFY PLAN — 4-1-15 [30]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

CONTINUED TO 5/18/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

17. 09-47451-B-13 TIMOTHY/PATRICIA BOWDEN
PLC-7 Peter L. Cianchetta

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
4-12-15 [110]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

The Motion for Determination of Final Cure and Payment Pursuant to Rule 3002.1(h) 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 Determination of Final Cure and Payment Pursuant to Rule 3002.1(h) is granted.

Timothy Bowden and Patricia Bowden ("Debtors") seek an order confirming that they have cured their mortgage default and made all post-petition mortgage payments required under the plan, pursuant to Fed. R. Bankr. P. 3002.1. On February 27, 2015, Chapter 13 Trustee Jan Johnson filed a Notice of Final Cure Payment for JPMorgan Chase Bank, N.A ("Creditor"). In its response, Creditor disagreed that Debtors are current in their payments and stated that Debtors have not cured post-petition arrears in the amount of $2,011.16. The Debtors dispute this amount, and their attorney contacted Creditor for a legible copy of the billing/payment spreadsheet, which is attached as Dkt. 114, Exh. C. Debtors assert that they have paid JPMorgan Chase Bank, N.A post-petition payments in the amount of $3,000.00.

The disputed payments claimed by the Creditor consist of monthly mortgage payments due for February 1, 2015, and March 1, 2015, each in the amount of $1,486.96, less a suspense amount of $962.76. However, Creditor's own records in the form of the spreadsheet attached to its response to the Trustee's Notice of Final Cure Payment, which Creditor provided Debtors at Debtors' request, reflects Creditor's receipt of $1,500.00 on February 3, 2015, and $1,500.00 on March 3, 2015. Debtors have also provided evidence that they made the February and March 2015 payments. This is an (f)(1) motion and the Creditor has not responded, objected to, or opposed the Debtors' motion or presented evidence to dispute the Debtors' contention that the February and March 2015 were made and received and, therefore, have not presented any evidence of an existing post-petition default.

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts.

Although the Creditor has filed a response to the Trustee's Notice of Final Cure Payment within 21 days after the service of the notice as required by Fed. R. Bankr. P. 3002.1(g), the Creditor has not filed a response to Debtors' Motion. Furthermore, a review of the Notice of Final Cure Payment (Dkt. 114, Exh. A) and the Creditor's billing/payment spreadsheet (Dkt. 114, Exhibit C) indicates that Debtors have made all payments under the plan for arrears to the Creditor. Therefore, the court finds that the Debtors have cured all mortgage defaults to JPMorgan Chase Bank, N.A. as required by the Chapter 13 Plan.

18. 15-22153-B-13 ANDREY LUNGU
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON
4-22-15 [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). The Debtor has filed a written reply to the Trustee's objection.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee objects to confirmation of the plan on the grounds that unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Trustee reaches this conclusion on the basis that the Debtor has equitable interest in real property located at 4706 Kinsey Court, Sacramento, California ("Subject Property"). The Debtor testified at the 341 meeting that he is the only party listed on the deed and the loan. Debtor's interest in the Subject Property along with additional non-exempt property would total to $101,378.72 in non-exempt property in the estate. The total amount that will be paid to unsecured creditors is only $5,076.11.

In response, Debtor asserts that he does not have any equitable interest in the Subject Property but rather only legal title. Debtor states that he holds legal title to the Subject Property in order to obtain financing on behalf of his parents, Valeriy and Lyumdmila Lungu, who could not obtain financing and purchase the Subject Property due to their credit score. According to the Declaration of Andrey Lungu and the Declaration of Valeriy and Lyumdmila Lungu, the Debtor and his parents have an understanding that when his parents' credit scores improve, that they would fully refinance and transfer the property solely into their names. According to the Debtor, at no point did the Debtor contemplate acting in any way but for the benefit of his parents.

As evidence that the Debtor holds no equitable interest in the Subject Property, Debtor provides bank statements and checks (Dkt. 21, Exh. A) showing that his parents paid for the down payment of the Subject Property by depositing funds into Debtor's Wells Fargo account, ending in -0363. Debtor also provides evidence of mortgage payments being made from a Wells Fargo account into Debtor's Bank of America account, ending in -6593 (Dkt. 21, Exh. D). Although the Debtor asserts that Exhibit D serves as proof of mortgage payments from his parents' bank account, the court cannot determine whether his parents are in fact the holder of this Wells Fargo bank account (since no name or account number is shown) nor the source of the $1,050.00 mortgage payments. Debtor also provides evidence that his grandparents, Pavel and Nina Malay, assist with utility payments (Dkt. 21, Exh. F and G).

The Debtor's entire argument that he holds only legal title is based on the assertion that the Debtor and his parents created a constructive trust. However, a constructive trust is a remedy imposed by a court and is an involuntary trust. It is not a voluntary trust arrangement. If, as the Debtor claims, he holds this property in trust for his parents, he would have to do so under a voluntary trust arrangement, in the absence of evidence that a court has imposed a constructive trust on the property. And there is no such evidence. The Debtor has also not provided any evidence of a voluntary trust arrangement, such as a trust agreement or certification of trust.

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

19. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN — OBJECTION TO CONFIRMATION OF PLAN BY HURT CONSTRUCTION CO.
KMD-1 Mark Shmorgon — 4-23-15 [20]
Thru #20

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.

Hunt Construction Co. ("Creditor") holds a non-possessory, non-purchase money security interest in tools of trade of Mikhail Varkentin and Yuliya Varkentin ("Debtors"). Creditor objects to confirmation of the plan on the grounds that the plan does not provide for a retention of lien securing the claim, the value of the property to be distributed to the Creditor is less than the allowed amount of its claim, and the Debtors have not surrendered the property securing Creditor's claim. 11 U.S.C. §§ 1325(a)(5).

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

20. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN — MOTION TO AVOID LIEN OF HUNT CONSTRUCTION CO.
MS-2 Mark Shmorgon — 4-27-15 [28]

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

The Motion to Avoid Lien is denied without prejudice.

This Motion requests an order avoiding the lien of Hunt Construction Co. ("Creditor") against tools of trade of Mikhail Varkentin and Yuliya Varkentin ("Debtors"), specifically business equipment and a 2005 Toyota Prius 4D ("Lien Property").

The Creditor has placed a non-possessory, non-purchase money security interest of $10,000.00 in the Lien Property. Debtors agree with this valuation. Creditor's proof of claim reflecting this lien was filed on April 20, 2014, as Proof of Claim No. 2.

Pursuant to the Debtor's Schedule B and the attachment (Dkt. 30, Exh. B), the Lien Property has an approximate value as follows:

Business equipment

Frame machine	$10,000.00
Two lifts	$ 3,000.00
Fork lift	$ 3,000.00
Hand and power tools	$ 1,000.00
Air compressor	$ 500.00
Shelves and fixtures	$ 1,000.00
Total	**$18,500.00**

2005 Prius Hatchback 4D **$ 3,000.00**

Debtors have claimed an exemption of $18,500.00 under California Code of Civil Procedure § 703.140(b)(6) and (b)(5) on the business equipment. In addition, Debtors have claimed an exemption of $3,000.00 under California Code of Civil Procedure § 703.140(b)(2) on the 2005 Toyota Prius Hatchback 4D. However, the motion to avoid this Creditor's lien is based on the claim that the lien impairs an exemption. Although the property subject to this lien is claimed as exempt, it is not yet exempt. The court's docket reflects that the § 341 meeting concluded on April 16, 2015, which means at the time this Motion to Avoid Lien is heard, the time within which parties in interest may object to the claimed exemptions will not have yet expired. See Fed. R. Bankr. P. 4003(b)(1). As a result, the property claimed as exempt is not yet exempt, which means § 522(f)(1)(B) is not applicable. *See Mwangi v. Wells Fargo Bank*, 764 F.3d 1168, 1177 (9th Cir. 2014) (property not exempt until 30-day objection period ends). The court will not avoid a lien on the basis it impairs an exemption when there is no exemption yet impaired.

21.	15-21856-B-13 EAT-1	ALLEN READ Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-23-15 [19]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

CONTINUED TO 5/18/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

22. 15-21856-B-13 ALLEN READ
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-22-15 [16]

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 grant the Motion to Dismiss.

First, the Debtor did not appear at the first meeting of creditors set for April 16, 2015, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor cannot fund the proposed monthly plan payments of $1,475.00 when his monthly net income is $0.00. The plan filed March 10, 2015, does not comply with 11 U.S.C. § 1325(a)(6).

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

Fifth, the Debtor has not provided the Trustee with a copy of his tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i). Furthermore, 11 U.S.C. § 521(e)(2)(B) and (C) require that the court dismiss a petition if a Chapter 13 debtor does not provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. The return must be produced seven (7) days prior to the date first set for the meeting of creditors. The meeting of creditors was concluded on April 16, 2015.

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

23. 15-22257-B-13 FEORRIAH JONES
AFL-1 Ashley R. Amerio

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
4-15-15 [15]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

The Motion to Value secured claim 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 Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of $12,747.00.

The Motion filed by Feorriah Jones ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of 2005 GMC Yukon Denali, Sport Utility 4D, VIN ending in -113807 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,747.00 as of the petition filing date. As the owner, the 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 lien on the Vehicle's title secures a purchase-money loan incurred in November 14, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,880.00. 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 $12,747.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

24. 15-21659-B-13 CHARLES HUGHES
JPJ-1 Pro Se
Thru #25

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON
4-22-15 [26]

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.

First, the plan filed March 11, 2015, does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Trustee calculates that the plan will pay $0.00 to Class 7 general unsecured creditors within 60 months.

Second, the Debtor is married but has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2).

Third, there is non-exempt equity in the Debtor's residence in the amount of approximately $96,754.23. As stated above, the plan pays $0.00 to the unsecured creditors within 60 months. Therefore, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Fourth, the claim of Carmax for a 2002 Lexus is misclassified as a Class 1 claim because it matures prior to the completion of the plan. As a result of the misclassification, the plan does not comply with 11 U.S.C. § 1325(a).

Fifth, the claim of CitiMortgage, Inc. for the 1st deed of trust on the Debtor's primary residence is misclassified as a Class 2A claim. As a result of the misclassification, the plan does not comply with 11 U.S.C. § 1322(b)(2).

Sixth, the Debtor has not exhibited his ability to fund the proposed plan payments pursuant to 11 U.S.C. § 1325(a)(6). Debtor's monthly income is less than the proposed monthly plan payment amount of $2,500.00.

Seventh, due to the misclassification of the claims for the 2002 Lexus and the 1st deed of trust on the Debtor's residence, the Trustee calculates that the plan will take approximately 128 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).

Eighth, the Debtor has not provided copies of certain items related to Debtor's business, Nor Cal Film Financing, to the Trustee. It cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

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.

25. 15-21659-B-13 CHARLES HUGHES
PD-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY CITIMORTGAGE, INC.
4-6-15 [23]

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.

First, the claim of CitiMortgage, Inc. for the 1st deed of trust on the Debtor's primary residence is misclassified as a Class 2A claim. As a result of the misclassification, the plan does not comply with 11 U.S.C. § 1322(b)(2).

Second, the Debtor's plan does not provide for the payment of the pre-petition arrears in the amount of $5,655.23 on Creditor's secured claim pursuant to 11 U.S.C. § 1322(b)(5). Because the plan does not provide for the full payment of arrearages, the plan cannot be confirmed.

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.

26. 10-25361-B-13 MARCUS HILL MOTION TO MODIFY PLAN
SLE-1 Steele Lanphier 4-28-15 [48]

Tentative Ruling: The Motion to Confirm the Plan has not 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). Only 15 days' notice was provided.

The Motion to Confirm the Plan is denied without prejudice.

27. 14-32364-B-13 MICHAEL/PAULA RHOADES
15-2045
RHOADES ET AL V. GUARDIAN HOME BROKERS, INC. ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-25-15 [1]

Thru #29

28. 14-32364-B-13 MICHAEL/PAULA RHOADES
15-2045 MHK-1
RHOADES ET AL V. GUARDIAN HOME BROKERS, INC. ET AL

MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT AND/OR MOTION FOR MORE DEFINITE STATEMENT
4-10-15 [7]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Dismiss for Failure to State a Claim Upon which Relief Can Be Granted and for More Definite Statement 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 will be determined at the scheduled hearing.

29. 14-32364-B-13 MICHAEL/PAULA RHOADES
15-2045 MHK-2
RHOADES ET AL V. GUARDIAN HOME BROKERS, INC. ET AL

MOTION TO SEVER AND STAY PLAINTIFFS FIRST CLAIM FOR RELIEF, MOTION TO SEVER, GRANT RELIEF FROM STAY AND COMPEL CONTRACTUAL BINDING ARBITRATION ON REMAINING CLAIMS, MOTION TO SEVER PLAINTIFFS SECOND CLAIM FOR RELIEF
4-10-15 [11]

Tentative Ruling: The court issues no tentative ruling.

The Motion 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 will be determined at the scheduled hearing.

30. 12-36168-B-13 BRIAN/NANCY OKAMOTO MOTION TO MODIFY PLAN
WW-8 Mark A. Wolff 3-30-15 [131]

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 denied without prejudice.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of $816.00, which represents approximately 1 plan payment. The Debtors have not made a plan payment to the Trustee since February 2, 2015. The Debtors do not appear to be able to make plan payments as proposed and have not shown that the plan complies with 11 U.S.C. § 1325(a)(6).

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

31. 14-32271-B-13 RICHARD/CAROLYN NORMAN MOTION TO CONFIRM PLAN
MB-1 Michael Benavides 3-31-15 [24]

Final Ruling: No appearance at the May 13, 2015 hearing is required.

CONTINUED TO 5/18/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

32. 15-21781-B-13 JASON/SHELLY BELOTTI
RDS-1 Richard D. Steffan

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
4-29-15 [32]

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 Value secured claim of Travis Credit Union ("Creditor") is granted and the secured claim is determined to have a value of $7,331.00.

The Motion filed by Jason Belotti and Shelly Belotti ("Debtors") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by the Declaration of Shelly Belotti. Debtors are the owner of a 2008 Hyundai Elantra ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,331.00 as of the petition filing date. As the owners, the Debtors' 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 lien on the Vehicle's title secures a purchase-money loan incurred in September 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,875.56. 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 $7,331.00 and its unsecured claim is in the amount of $2,544.56. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

33. 12-21093-B-13 DEANNA CASTRO
APN-1 Scott J. Sagaria

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-10-15 [47]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the May 13, 2015 hearing is required.

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

The Motion for Relief From the Automatic Stay is granted.

Santander Consumer USA, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2005 Toyota Matrix, VIN ending in -361523 (the "Vehicle"). The moving party has provided the Declaration of Monica Resendez ("Resendez Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Resendez Declaration provides testimony that the Vehicle was involved in an accident and declared a total loss by Debtor's insurance carrier on March 23, 2015. Under the terms of the Contract entered into between the parties, not only did the Debtor agree to insure the Vehicle for physical damage, but the Debtor further agreed that the insurance must cover Movant's interest in the Vehicle and the Debtor further agreed that if the Vehicle was damaged, Movant could elect to use any insurance settlement to reduce what the Debtor owed the Secured Creditor. Under these circumstances, Movant elects to use the insurance settlement to reduce the Debtor's secured obligation to it, and therefore seeks relief from automatic stay in order to apply the insurance proceeds from Debtor's insurance carrier to Debtor's account with Movant and to allow Movant, or its assignee, to dispose of the property in a commercially reasonable sale in the normal course of business.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $4,400.78, as stated in the Resendez Declaration, while the value of the Vehicle is determined to be a total loss. Movant believes that the insurance proceeds are in the approximate amount of $7,282.97. Movant is informed that Chapter 13 Trustee Jan Johnson does not intend to make any further payments on Movant's secured claim based on his office's notification by the Debtor that the property is a total loss.

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). These circumstances constitute cause under § 362(d)(1).

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA, Inc., 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.

No other or additional relief is granted by the court.

34. 14-21394-B-13 PATRICK/SUZANNE CLARK — CONTINUED MOTION TO MODIFY PLAN
SDB-4 W. Scott de Bie — 3-10-15 [71]

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).

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

The Corporation states in its response that it "does not oppose confirmation of a Plan that provides for valuation of the Debtors[']' 50% interest in a corporation (S&J Advertising, Inc.) ("Corporation"), and use of sale proceeds to fund a plan, including appropriate treatment of professionals." However, the Corporation does oppose confirmation on the grounds that "the proposed third Plan does not comply with 11 U.S.C. § 1325(a)(1) because it does not comply with the provisions of the Code relating to employment and compensation of professionals," and the Corporation's request that "confirmation of the Debtors[']' Third Plan be conditioned on appropriate disclosure and treatment of litigation counsel, and appropriate disclosure of value of the Debtors[']' stock." Considering the latter language, the court construes the Corporation's response as an objection to confirmation under 11 U.S.C. § 1325(a)(1) on the basis that the Debtors' third plan does not comply with applicable code provisions, specifically 11 U.S.C. §§ 327, 329, and 330, as they relate to the Debtors' retention of state court counsel to prosecute an action against the Corporation.

In response to the Corporation's opposition, Debtors have disclosed the attorney's hourly rate and all compensation paid to the attorney for services in connection with the Debtors' action against the Corporation over the Debtors' corporate shares and other matters concerning this case (Dkts. 91 and 92). This is pursuant to 11 U.S.C. § 329(a). However, as the Corporation points out, the Debtors have not disclosed any amounts that have been billed and which remain unpaid. Section 329(a) contemplates disclosure of *all* compensation. Without such disclosure, the court cannot find that the plan complies with 11 U.S.C. § 1325(a)(1).

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

35. 14-30481-B-13 TERRY/MARLYS ARNOLD
RHM-4 Robert Hale McConnell

MOTION FOR APPROVAL OF DISTRIBUTION TO SECURED CREDITOR PRE-CONFIRMATION
O.S.T.
5-7-15 [75]

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.