UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 24, 2016 at 1:00 p.m.

1.	15-29704-B-13 ARF-1	GARY HORTON Allan R. Frumkin	OBJECTION TO CLAIM OF PROVIDENT CREDIT UNION, CLAIM NUMBER 3 3-28-16 [27]

Tentative Ruling: The Debtor's Objection to Creditor Claim Number 3, By Provident Credit Union, Filed March 10, 2016 for $18,854.09 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. 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 court's tentative decision is to sustain the objection filed by Debtor Gary Horton ("Debtor") and disallow any claim for attorney's fees included in the claim filed by creditor Provident Credit Union ("Creditor") as proof of claim No. 3. Based on the court's disposition of Debtor's objection to Creditor's claim, Debtor's request for an evidentiary hearing is denied as moot.

Background

On or about September 3, 2015, the Placer County Superior Court granted Creditor's summary judgment motion and entered judgment for Creditor and against Debtor in the amount of $11,601.01. Presumably as the prevailing party in that state court action, on or about November 30, 2015, Creditor filed a post-judgment motion for attorney's fees. Creditor sought attorney's fees in the amount of $6,907.00. Debtor opposed that motion and Creditor replied to the opposition. A hearing on the motion was set for December 22, 2015. However, four days before that hearing, on December 18, 2015, Debtor filed the petition that commenced this case.

On or about March 10, 2016, Creditor filed a proof of claim (Claim No. 3) in the amount of $18,854.09. The claim is based on the state court judgment and includes the $6,907.00 in attorney's fees Creditor requested, but which were not awarded, in the state court action.

Debtor now objects to the attorney's fees portion of Creditor's claim. Debtor claims those fees were not awarded and, thus, are not included in or a part of the judgment on which Creditor's claim is based. The court agrees with the Debtor.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (BAP 9th Cir. 2006). This presumption is rebuttable. *See Id.* at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation and internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (1st Cir. BAP 2009)).

Debtor objects to the inclusion of attorney's fees in the Creditor's proof of claim on the basis those fees are not owed because they were not awarded and, thus, are not included in the state court judgment. Typically, "[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." LR 3007-1(a). However, in this case, the Debtor's statement that the debt for attorney's fees is not owed is accurate. And it is also not disputed by the Creditor.[1] Thus, as the state court did not (and because of the bankruptcy filing could not) award Creditor its post-judgment attorney's fees, those fees are not included in the amount of the pre-petition judgment the state court entered against the Debtor.

Therefore, it is ordered that the Debtor's objection to the inclusion of attorney's fees in the amount of $6,907.00 in Creditor's claim filed as proof of claim No. 3 is sustained and the claim amount is disallowed to the extent of $6,907.00.

It is further ordered that the Debtor's request for an evidentiary hearing is denied as moot.

[1]Not only does Creditor recognize that the state court did not award it post-judgment attorney's fees, but, Creditor altogether fails to address this basis for disallowance in its response to the Debtor's objection. Debtor objects to Creditor's proof of claim on three grounds: (1) the state court attorney's fees motion was untimely; (2) the attorney's fees requested in the state court action were unreasonable; and (3) the attorney's fees were not included in the judgment entered against the Debtor or awarded post-judgment. Dkt. 27 at 2. Creditor's opposition recites these three grounds, but address only the first two. Dkt. 37 at 2-4.

2.	11-20709-B-13 JBR-1 **Thru #3**	JAMES/KATHREN VANIER Jennifer B. Reichhoff	NOTICE OF DEATH AND AMENDED MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR 4-12-16 [97]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

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

The court's decision is to substitute the surviving Debtor who is appointed representative of the estate, continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Kathren Vanier gives notice of death of her husband and Co-Debtor James J. Vanier and requests the court substitute Kathren Vanier in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

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 continued administration of the Chapter 13 case is possible and in the best interest of creditors. The Debtors have paid $22,215.00 to the Chapter 13 Trustee to date and have completed 60 months of a 60-month plan. Despite the death of Mr. Vanier, Mrs. Vanier continued to make timely plan payments. The Debtors have also filed a motion to modify the Chapter 13 plan on February 29, 2016, and a second modified plan on April 12, 2016, so that general unsecured creditors will receive $2,428.66 and allow the case to be discharged.

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.

3. 11-20709-B-13 JAMES/KATHREN VANIER — AMENDED MOTION TO MODIFY PLAN
JBR-2 Jennifer B. Reichhoff — 4-12-16 [102]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

The Amended Motion to Confirmation of 2nd Amended Plan Filed On 2/29/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on April 12, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

4. 16-20109-B-13 RENATO/MARYROSE PORLARIS MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 4-12-16 [32]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan Dated April 12, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,402.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the proposed plan does not specify a cure of the post-petition arrearage owed to Bank of America including a specific post-petition arrearage amount, interest rate, and monthly dividend. Therefore, the plan cannot be fully assessed for feasibility or effectively administered.

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

5. 13-31710-B-13 DONALD/CLEMIE HOPKINS MOTION TO MODIFY PLAN
SJS-2 Matthew J. DeCaminada 4-14-16 [36]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on April 14, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

6. 16-20914-B-13 LEYLA SMITH — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-1 Jeffrey S. Ogilvie — 4-20-16 [15]

Tentative Ruling: The Objection to Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Debtor has filed a response.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of the California Code of Civil Procedure § 703.140(b)(10)(D) to exempt her interest in a bank account with USAA Federal Savings Bank. This claim of exemption is limited only to the Debtor's right to receive alimony, support, or separate maintenance. The Debtor has not cited any authority for the proposition that she is entitled to claim this exemption for monies she has already received.

Debtor has filed a response stating that she does not oppose the Trustee's objection and that she will file an amendment to exempt the bank funds pursuant to California Code of Civil Procedure § 703.140(b)(5).

The Trustee's objection is sustained and the claimed exemption is disallowed.

7. 15-29129-B-13 SUZANNE RYAN-BEEDY MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 4-12-16 [47]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated April 12, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Second, Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses and it is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

Third, the maximum fee that may be charged is $4,000.00 in nonbusiness cases and $6,000.00 in business cases pursuant to Local Bankr. R. 2016-1. The Disclosure of Compensation of Attorney for Debtors lists a total fee of $6,000.00, which exceeds the amount that may be charged for nonbusiness case.

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

8. 16-20333-B-13 ANDREW SANDERSON-SPROUL MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 4-12-16 [31]
Thru #9

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated April 12, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $45.00, which represents approximately 1 partial plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

9. 16-20333-B-13 ANDREW SANDERSON-SPROUL OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-3 Gary Ray Fraley 4-20-16 [38]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of the California Code of Civil Procedure § 704.070 to exempt his interest in a bank account with a balance of $1,201.66 in its full amount. Since the Debtor is only entitled to exempt up to 75% of this amount pursuant to California Code of Civil Procedure § 704(b)(2), the Debtor has over-exempted his bank account balance by $300.41.

The Trustee's objection is sustained and the claimed exemption is disallowed.

10. 15-26339-B-13 WILLIAM/NANCIE DUNHAM
CK-2 Catherine King
Thru #11

MOTION TO RECONSIDER DISMISSAL OF CASE
4-19-16 [127]

DEBTOR DISMISSED:
04/19/2016
JOINT DEBTOR DISMISSED:
04/19/2016

Tentative Ruling: The Motion for Reconsideration of Order Dismissing Case 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 court's decision is to deny the motion with prejudice.

Debtors William and Nancie Dunham ("Dunham") move for reconsideration of the order dismissing their chapter 13 case. The Debtors had filed a second amended plan and motion to confirm it on November 16, 2015. Both were heard on January 6, 2016, and because the Debtors previously withdrew the second amended plan, the motion to confirm was dismissed as moot in a minute order filed on January 9, 2016. Dkt. 80. A separate minute order also filed on January 9, 2016, gave the Debtors 75-days to confirm a plan and stated that the case would be dismissed on the ex parte motion of the chapter 13 trustee ("Trustee") if a plan was not confirmed before that 75-day period expired. Dkt. 81. The 75-day period expired on March 24, 2016.

Independent of the 75-day deadline, on January 26, 2016, Trustee filed a motion to dismiss this case under 11 U.S.C. § 1307(c)(1) based on the Debtors' failure to re-file a plan or take any other action towards confirmation after the second amended plan was withdrawn and the motion to confirm it denied as moot. Dkt. 84. The court heard and denied this motion to dismiss on February 22, 2016, noting that the Debtors had engaged in discussions and reached an agreement with creditor Wells Fargo. Dkts. 98, 102. In the meantime, the 75-day period for confirmation set by the order of January 9, 2016, continued to run.

On February 22, 2016, and without regard to the 75-day confirmation deadline, the Debtors filed a third amended plan and a motion to confirm. The court heard those matters on April 12, 2016, and found that the third amended plan and motion to confirm it were moot because on April 6, 2016, the Debtors filed a fourth amended plan and motion to confirm it which the Debtors set for hearing on May 24, 2016. Dkt. 117.

Waiting more than 3 weeks after the 75-day confirmation deadline set by the order of January 9, 2016, expired, on April 18, 2016, the Trustee filed an ex parte application to dismiss this chapter 13 case for failure to confirm a plan within the 75-day deadline. The court granted that ex parte application and dismissed this case in an order filed and entered on April 19, 2016. Dkt. 122. That same day, after the dismissal order was entered, the Debtors filed (1) a reply to the Trustee's ex parte application to dismiss and (2) a motion for reconsideration of the dismissal order.

The reply requests an extension of the 75-day confirmation deadline (although the deadline had already expired when the reply was filed). The reply purports to explain why an extension is warranted but does not explain why an extension was not (or could not have been) requested or obtained from the court or the Trustee before the 75-day confirmation deadline expired and the case dismissed. The motion for reconsideration also does not explain why the Debtors or counsel failed to request or were unable to obtain an extension of the 75-day confirmation deadline before that deadline expired and this case was dismissed. In fact, in their reply to the Trustee's opposition to the motion for reconsideration, the Debtors concede that it was a mistake to not request an extension of the 75-day confirmation deadline before it expired.

Discussion

When, as here, a motion for reconsideration is filed within fourteen days of the entry of the underlying order, the motion is decided under Federal Rule of Bankruptcy Procedure 9023, which incorporates Federal Rule of Civil Procedure 59(e). *See Dicker v. Dye In re Edelman*, 237 B.R. 146, 151 (9th Cir. BAP 1999). Relief under Rule 9023 is an extraordinary remedy which should be used sparingly. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). In fact, such a motion may only be granted on one of four grounds:

> (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.

Allstate, 634 F.3d at 1111.

Numbers 1, 2, and 4 are clearly inapplicable here. The Debtors have identified no manifest errors of fact or law, no newly discovered or otherwise previously unavailable evidence, an no change in controlling law. And as to number 3, the Debtors have failed to establish manifest injustice.

"[M]anifest injustice does not exist where . . . a party could have easily avoided the outcome, but instead elected not to act until after a final order had been entered." *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 673 (D.C. Cir. 2004)(internal quotation marks and brackets omitted). That is precisely what occurred here. Debtors offer no explanation why they could not have requested or obtained an extension of the 75-day confirmation deadline before it expired and the case was dismissed. Counsel states that negotiations with Wells Fargo took longer than expected; however, she also concedes that in light of those extended negotiations it was a mistake for her to not request an extension of the 75-day confirmation deadline. There is no evidence of anything that prevented counsel from obtaining an extension. Counsel just didn't do it. Under these circumstances, the court finds no manifest injustice resulting from either the denial of a post-expiration request for an extension of the 75-day confirmation deadline or the dismissal of the case resulting from the Debtors' failure to confirm a plan within the applicable 75-day period.

The court would reach the same result if it were to consider the Debtors' motion for reconsideration under Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60. Counsel admits that it was a mistake for her to not extend the 75-confirmation deadline before it expired. However, the Debtors have not established either good cause or excusable neglect.

Federal Rule of Bankruptcy Procedure 9006(b) permits a court to extend deadlines, even after the time to act has expired, if there is good cause and the party "failed to act because of excusable neglect." Fed. R. Bankr. Pro. 9006(b)(1). Generally, requests for relief based on excusable neglect are subject to well-established standards. The bankruptcy court must consider the totality of the circumstances and typically must focus on four factors: "(1) the danger of prejudice to the non-moving party, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the moving party's conduct was in good faith." *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004) (citing *Pioneer Inv. Servs. Co. V. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993)).

On the record before it, the court could find that two of the four *Pioneer* factors, the second and fourth, weigh in the Debtors' favor. The Debtors acted quickly - both with respect to their request for an extension of the 75-confirmation deadline and reconsideration of dismissal. The former was filed within less than a month after the 75-day confirmation deadline expired and the latter was filed on the same day as the

dismissal order. The court will also assume that the Debtors have acted in good faith.

On the other hand, the Debtors have altogether failed to carry their burden of proof on the first and third factors. *See In re Goody's Family Clothing, Inc.*, 443 B.R. 5, 15 (Bankr. D. Del. 2010) (citing *In re KMart Corp.*, 381 F.3d 709, 714 (7th Cir.2004)). With regard to the third factor which focuses on the reason for non-compliance with the 75-day confirmation deadline, the Debtors have none. In fact, the Debtors concede that nothing prevented them from obtaining an extension despite ongoing negotiations with Wells Fargo and it was a mistake to not have the deadline extended. Counsel admits she just failed to act. Likewise, the Debtors have failed to articulate the absence of prejudice if the 75-day confirmation deadline were extended and the dismissal order vacated. Unable to demonstrate the absence of prejudice, the court acts within its discretion in finding no excusable neglect even if the failure to act within a prescribed deadline results from the negligent or inadvertent omission of counsel. *See Pioneer*, 507 U.S. at 398.

Therefore, for all the foregoing reasons, the Debtors' motion for reconsideration and the Debtors' request for an extension of the 75-day confirmation deadline set by the order of January 9, 2016, are denied with prejudice.

11. 15-26339-B-13 WILLIAM/NANCIE DUNHAM — MOTION TO CONFIRM PLAN
CK-4 Catherine King — 4-6-16 [111]

DEBTOR DISMISSED:
04/19/2016
JOINT DEBTOR DISMISSED:
04/19/2016

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated April 6, 2016, 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 is denied as moot based on the ruling at Item #10.

12. 16-20840-B-13 SANDRA SAWYER
JPJ-2 Mark A. Wolff

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-6-16 [39]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

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

The Trustee's objection is sustained and the claimed exemption is disallowed.

13. 13-22642-B-13 FREDERICK/JANET SMITH MOTION TO MODIFY PLAN
BLG-4 Pauldeep Bains 4-15-16 [55]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on 4/15/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the plan filed April 15, 2016, does not provide for the secured debt of Springleaf Financial Services, Inc. The previous plan filed April 5, 2013, and confirmed on June 11, 2013, had provided for the claim in Class 2A and the Trustee had made disbursements in accordance with the previous plan. Clarification is needed as to the Debtors' intention with respect to this secured claim.

Second, the Debtors failed to provide the Trustee or the court with an accounting of the $8,590.00 received from insurance after their 2006 Nissan Maxima was totaled. The Debtors have also failed to explain why these funds have not been turned over to the Trustee to pay their creditors. It cannot be determined whether the plan has been filed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

Third, a lease owed to Lincoln Automotive Financial Services was added to Section 3.02 for $435.19 per month. The previous plan and Schedule G make no reference to such a lease. The Debtors have not provided any explanation of when they entered into the lease or the purpose of the lease. Additionally, there is no expense for this payment listed in amended Schedule J filed on April 15, 2016. Furthermore, if the Debtors entered into this lease while this case was pending, the Debtors have failed to obtain approval for such lease as required pursuant to Local Bankr. R. 3015-1(i)(1)(E). The plan does not appear to comply with 11 U.S.C. §§ 1325(a)(3) or (a)(6).

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

14. 16-22855-B-13 JESSE TAYLOR MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Matthew J. DeCaminada 5-10-16 [13]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 12, 2016, after Debtor failed to timely file documents (case no. 16-22091, Dkt. 10). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor states that the previous case was filed pro se as a skeletal petition, presumably to keep his primary residence. Between the dismissal of the previous case and the filing of the instant case, the Debtor had negotiated with the mortgage lender on his property concerning a possible loan modification. When the negotiations fell through, the Debtor retained Sagaria Law, P.C. for the filing of the instant case.

The Debtor concedes that the instant case was again filed as a skeletal petition on the eve of foreclosure of his property, but states that he did so in good faith and with the guidance of Sagaria Law, P.C. The Debtor states that the instant case was filed in order to cure pre-petition filing mortgage arrears on the Debtor's real property and that his circumstances have changed in that he now is represented by counsel, who will guide the Debtor on how to save his house from foreclosure. The Debtor's Declaration states that he has been gainfully employed by the same employer for approximately 12 years and has the ability to fund the current plan.

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

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

15. 16-20564-B-13 KATRINA NOPEL — MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT
PLC-1 Peter L. Cianchetta — 4-20-16 [28]
Thru #16

Final Ruling: No appearance at the May 24, 2016, hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the motion was not served at the proper address pursuant to Fed. R. Bankr. P. 2002(g). Notices to Employment Development Department should be sent to BOCS MIC91/PO Box 826218, Sacramento, California, 94230-6218, which is the address stated in this Creditor's proof of claim where notices are to be sent pursuant to Rule 2002(g).

The court's decision is to deny without prejudice the motion to avoid judicial lien of Employment Development Department.

16. 16-20564-B-13 KATRINA NOPEL — MOTION TO CONFIRM PLAN
PLC-3 — 4-21-16 [33]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan.

Feasibility of the plan depends on the granting of a motion to avoid lien for Employment Development Department. Although the Debtor has filed, served, and set for hearing a lien avoidance for Employment Development Department pursuant to Local Bankr. R. 3015-1(j), that matter is denied without prejudice at Item #15. The plan cannot be confirmed unless the motion to avoid lien is granted.

The Trustee's objection to confirmation on the ground that feasibility depends on the granting of a motion to value collateral for HSBC Bank USA, National Association is no longer at issue. The motion to value collateral was granted on May 10, 2016.

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

17. 16-22265-B-13 JUAN ACOSTA
SDB-1 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORPORATION
4-19-16 [8]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

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

The court's decision is to value the secured claim of First Investors Servicing Corporation at $18,933.00.

The motion filed by Debtor to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Mercedes C250 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $18,933.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by First Investors Servicing Corporation is the claim which may be the subject of the present motion.

Discussion

The Debtor owned this vehicle prior to February 2015. The lien on the Vehicle's title secures a nonpurchase-money loan incurred on or about February 1, 2015, to secure a debt owed to Creditor with a balance of approximately $27,117.99. 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 $18,933.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

18. 16-20983-B-13 ELAINE ANCHETA
HWW-2 Hank W. Walth

MOTION TO VALUE COLLATERAL OF CARFINANCE CAPITAL, LLC
4-21-16 [29]

DEBTOR DISMISSED: 04/28/2016

Final Ruling: No appearance at the May 24, 2016, hearing is required. The case having been dismissed on April 28, 2016, the motion is dismissed as moot.

19. 16-20983-B-13 ELAINE ANCHETA
HWW-3 Hank W. Walth

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
4-21-16 [34]

DEBTOR DISMISSED: 04/28/2016

Final Ruling: No appearance at the May 24, 2016, hearing is required. The case having been dismissed on April 28, 2016, the motion is dismissed as moot.

20. 16-20587-B-13 TERRY ARNOLD MOTION TO CONFIRM PLAN
SDH-2 Scott D. Hughes 4-7-16 [27]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition has been filed by the Trustee and a response has been filed by the Debtor.

The court's decision is to not confirm the amended plan.

First, assuming there is $92,469.32 in unsecured claims, as evidenced by the Trustee's exhibits and not $59,123.85 as stated in the Debtor's response, the plan will take approximately 75 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).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,350.00, which represents approximately 1 plan payment. Unless the Debtor cures this delinquency by the hearing date as stated in the Debtor's response, the Debtor does not appear to be able to make plan payments proposed and has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

21.	15-29588-B-7 SJS-1	BEVERLY BAKER HARRIS Matthew J. DeCaminada	MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 4-25-16 [51]

Final Ruling: No appearance at the May 24, 2016, hearing is required.

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

The court's decision is to value the secured claim of JPMorgan Chase Bank, NA at $5,997.00.

The motion filed by Debtor to value the secured claim of JPMorgan Chase Bank, NA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Mercedes CLK ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,997.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in September 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 $12,450.00. 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 $5,997.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

22. 15-29496-B-13 ANTHONY/HELEN CASACLANG — OBJECTION TO CLAIM OF CORNERSTONE HOMEOWNERS ASSOCIATION, CLAIM NUMBER 19
SDB-2 W. Scott de Bie — 4-19-16 [47]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 24, 2016, hearing is required, the objection having been withdrawn by the moving party.

23. 16-21574-B-13 RODNEY/ANNA RATH
BN-1 Mohammad M. Mokarram
Thru #24

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE GOLDEN 1 CREDIT UNION
4-27-16 [17]

Tentative Ruling: This matter was continued from May 17, 2016, in order to be heard after the § 341 meeting set for May 19, 2016. The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Creditor Golden 1 Credit Union holds a second deed of trust secured by Debtors' residence. The Debtors had filed for chapter 7 bankruptcy on March 28, 2011, and received a discharge in July 11, 2011. The Debtors have now filed for chapter 13 bankruptcy and have chosen to propose payment to Creditor in their plan, presumably to keep their home and avoid foreclosure. Creditor states that the plan fails to fully provide for its claim of $87,679.76 and fails to cure pre-petition arrearages in excess of $60,000.00

In support of its objection, the Creditor has filed the Declaration of Jesus Vasquez, member care support manager of Golden 1 Credit Union who is responsible for overseeing the Debtors' loan account. However, the Creditor has not filed a proof of claim.

A review of the plan shows that it does not propose to cure these pre-petition arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 15, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

24. 16-21574-B-13 RODNEY/ANNA RATH
JPJ-1 Mohammad M. Mokarram

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-28-16 [21]

Tentative Ruling: This matter was continued from May 17, 2016, in order to be heard after the § 341 meeting set for May 19, 2016. The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors did not appear at their continued § 341 meeting held on May 5, 2016, at which time the Debtors were required to file tax returns of the last 4 years and provide the Trustee with copies. The § 341 meeting was continued to May 19, 2016, and again the Debtors did not appear. It cannot be assessed whether the plan is feasible or has been proposed in good faith.

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

Third, the Debtors have not provided the Trustee with copies of certain items related to their ownership and operation of a business. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtors have not complied with 11 U.S.C. § 521.

Fourth, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses. Feasibility of the plan cannot be determined.

The plan filed March 15, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.