UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 5, 2018 at 1:00 p.m.

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1. 18-22000-B-13 APN-1 **Thru #2** — LOUIE/SHARDALAI GILLIGAN, Ronald W. Holland — OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION, 4-25-18 [13]

Tentative Ruling: Secured Creditor, Toyota Motor Credit Corporation's 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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Toyota Motor Credit Corporation's objection, the Debtors filed an amended plan on May 16, 2018. The confirmation hearing for the amended plan is scheduled for July 3, 2018. The earlier plan filed April 3, 2018, is not confirmed.

The court will enter an appropriate minute order.

2. 18-22000-B-13 JPJ-1 — LOUIE/SHARDALAI GILLIGAN, Ronald W. Holland — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 5-9-18 [21]

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

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on May 16, 2018. The confirmation hearing for the amended plan is scheduled for July 3, 2018. The earlier plan filed April 3, 2018, is not confirmed.

The court will enter an appropriate minute order.

3. 15-26501-B-13 HILLARY CRINER
SDH-5 Scott D. Hughes

MOTION FOR COMPENSATION FOR SCOTT D. HUGHES, DEBTORS ATTORNEY(S)
4-25-18 [88]

Tentative Ruling: The Motion for Additional Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) 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 grant the motion in part and deny the motion in part.

Request for Additional Attorney's Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Scott Hughes ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 35. Applicant now seeks additional compensation in the amount of $5,737.50 in fees and $33.64 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 91.

Response by Trustee

The Chapter 13 Trustee objects to Applicant's request for additional fees and costs to the extent that it includes services performed from March 28, 2016, to July 11, 2016. Trustee asserts that Applicant has already been compensated for services performed during this period because those post-confirmation services are included in the "no-look" fee under Local Bankruptcy Rule 2016-1. Pursuant to Local Bankruptcy Rule 2016-1(c)(3), the fee fairly compensates a debtor's attorney for all pre-confirmation services and most-post confirmation services such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to confirm it to the claims filed.

According to Trustee, the fees from March 28, 2016, to July 11, 2016, total $1,605.60 and should be deducted from Applicant's requested amount of additional fees.

Discussion

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

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require two modified plans due to a claim filed by State Board of Equalization and the approval of a permanent loan modification.

The court finds that Applicant did provide some substantial and unanticipated work but agrees with the Trustee that the services provided from March 28, 2016, to July 11, 2016 - which consisted of modifying the plan once to conform it to claims filed - falls within the services performed in a typical Chapter 13 case.

Therefore, the court will deduct fees and costs incurred from March 28, 2016, to July 11, 2016, which the court calculates as $1,757.24 (and not $1,605.60 as stated by the Trustee). This consists of $1,725.00 in fees and $32.24 in costs.

The court finds Applicant's hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided.

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

Additional Fees	$5,737.50
Additional Costs and Expenses	$ 33.64
Less Fees Already Paid	$1,725.00
Less Costs Already Paid	$ 32.24
Total	**$4,013.90**

The court will enter an appropriate minute order.

4. 15-28611-B-13 MARY COBOS
JPJ-2 Muoi Chea

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7, MOTION TO DISMISS CASE
4-27-18 [64]

Tentative Ruling: Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted or in the alternative dismissed based on the following grounds.

Movant seeks dismissal of the case on the basis that Debtor is $1,629.00 delinquent in plan payments, which represents approximately 2.19 plan payments. By the time this matter is heard, an additional plan payment in the amount of $743.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Movant states that conversion of this case to a Chapter 7, rather than dismissal, is in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c) because the total value of non-exempt property in the estate is approximately $94,287.29 from the Debtor's real property, burial plot, cash, bank accounts, and a utility trailer based on Schedules A/B and C filed November 7, 2015.

Response by Debtor

Debtor has filed a response objecting to the motion to convert. Debtor states that she has filed a second modified plan that addresses the Trustee's concerns and will bring the plan payment current. The hearing on the motion to confirm modified plan is set for July 3, 2018, at 1:00 p.m.

Discussion

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 not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *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).

Provided that the Debtor is current at the time of the hearing, cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed a second modified plan that will bring the plan payment current. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

5. 17-24614-B-13 ALFONSO/CAMMIE MACIEL MOTION TO CONFIRM PLAN
PLC-7 Peter L. Cianchetta 4-27-18 [94]

Tentative Ruling: The Motion to Confirm Amended Chapter 13 Plan has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,395.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes an impermissible expense in the amount of $483.00 for voluntary retirement contributions. These are disposable income under 11 U.S.C. § 541(b)(7) and thus such income must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012). Without the expense for voluntary retirement contributions, the Debtors' monthly disposable income is $315.80 and the Debtors must pay no less than $18,948.00 to unsecured non-priority creditors. Based on the allowed claims, the total amount of the unsecured non-priority debts is $10,441.57. The Debtors plan must pay all unsecured, non-priority creditors in full.

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

The court will enter an appropriate minute order.

6. 17-27916-B-13 SHANNON LAWRENCE MOTION TO CONFIRM PLAN
MJD-3 Matthew J. DeCaminada 4-27-18 [47]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

Debtor's Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 27, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

7. 17-24418-B-13 CARLOS/KELLY SMITH MOTION TO CONFIRM PLAN
MCN-5 William F. McLaughlin 4-20-18 [79]

Tentative Ruling: The Amended Motion to Confirm Plan has been set for hearing on the 35-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)(B) 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 third amended plan.

First, Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,933.00, which represents approximately .41 plan payments. By the time this matter is heard, an additional plan payment in the amount of $7,173.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, pursuant to the proof of claim filed by the State Comp Ins Fund on February 23, 2018, Claim No. 8-1, the Debtors are post-petition delinquent with their worker's compensation insurance payments. The Debtors have not complied with Section 6.02 of the December 1, 2017, standard plan as well as Local Bankr. R. 3015-1(b).

The third amended plan filed April 2, 2018, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

8.	18-21221-B-13 PGM-3 **Thru #9**	JEFFREY/LORNA FUKUSHIMA Peter G. Macaluso	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2 4-17-18 [27]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

Debtor's [sic] Objection to Claim # 2-1, Filed by Cavalry SPV I, LLC on March 15, 2018, and Attorney Fees in Defense Thereof has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 2-1 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jeffrey Fukushima and Lorna Fukushima ("Debtors") request that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 2-1. The claim is asserted to be unsecured in the amount of $2,904.61. Debtors object to the proof of claim on grounds that it does not include a last transaction date or last payment date as required pursuant to Fed. R. Bankr. P. 3001(c)(3)(A) for an open-end or revolving consumer credit agreement.

Discussion

The starting place is Rule 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). This rule creates an evidentiary presumption of validity for a **properly filed** proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (9th Cir. BAP 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). Under that standard, the Debtors' objection (particularly in the absence of any supporting declaration) would be overruled because "[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." LBR 3007-1(a).

However, in situations in which a proof of claim is not properly filed, it is not entitled to a presumption of validity and the burden of proof is on creditor. *In re Santiago*, 404 B.R. 464, 570 (Bankr. S.D. Fla. 2009). In those instances, a Chapter 13 debtor need only object to the proof of claim on a basis provided § 502(b) and, upon the debtor's proper objection, the burden of proof rests with the creditor to establish validity of its claim. *In re Mazyzk*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014); *In re Porter*, 374 B.R. 471, 483 (Bankr. D. Conn. 2007).

In this case, Creditor's proof of claim is not a properly filed proof of claim. It is not a properly filed proof of claim because - according to the Creditor's own evidence attached to its proof of claim - the sections for Last Transaction Date and Last Payment Date are left blank. The court cannot determine when the last payment was received and whether the debt was time barred at the time the case was filed under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1). In short, Creditor's proof of claim is not entitled to a presumption of validity because Creditor has not presented sufficient evidence to support its claim.

Stripped of its presumptive validity, the court construes the Debtors' objection to

Creditor's proof of claim as one under § 502(b)(1), *i.e.*, that the claim is unenforceable against the Debtors, and therefore a valid objection. And because Creditor's proof of claim is admittedly inaccurate, the court cannot conclude that the Creditor has carried its burden of proving the validity of its claim.

Therefore, for the foregoing reasons, the Debtors' objection is sustained and Creditor's claim is disallowed. However, disallowance of Creditor's claim is without prejudice to the filing of an amended proof of claim and a motion for reconsideration of the disallowance based on the amended proof of claim within fourteen (14) days of the date on which an order disallowing Creditor's claim entered. *See* 11 U.S.C. § 502(j); Fed. R. Bankr. P. 3008.

Attorneys' Fees Requested

Although requested, Debtors have not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Objection. Debtors are not awarded any attorneys' fees.

The court will enter an appropriate minute order.

9.	18-21221-B-13 PGM-4	JEFFREY/LORNA FUKUSHIMA Peter G. Macaluso	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1-1 4-18-18 [31]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

Debtor's [sic] Objection to Claim # 1-1, Filed by Cavalry SPV I, LLC on March 15, 2018, and Attorney Fees in Defense Thereof has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jeffrey Fukushima and Lorna Fukushima ("Debtors") request that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be unsecured in the amount of $10,311.46. Debtors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about October 19, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 2, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

Attorneys' Fees Requested

Although requested, Debtors have not stated either a contractual or statutory basis for

the award of attorneys' fees in connection with this Objection. Debtors are not awarded any attorneys' fees.

The court will enter an appropriate minute order.

10. 17-27623-B-13 JOSEPHINE WRIGHT — MOTION TO CONFIRM PLAN
TJW-1 Timothy J. Walsh — 4-13-18 [26]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The case having been converted to one under Chapter 7 on June 1, 2018, the motion to confirm is denied as moot.

The court will enter an appropriate minute order.

11. 18-21527-B-13 ROBERT PORTER — MOTION TO CONFIRM PLAN
GEL-3 Gabriel E. Liberman — 4-11-18 [31]
Thru #12

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the plan.

The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by creditors and the opposition filed by the Chapter 13 Trustee was withdrawn at Item #12. The plan filed on April 11, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

12. 18-21527-B-13 ROBERT PORTER — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Gabriel E. Liberman — 5-9-18 [52]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed April 11, 2018, will be confirmed.

The court will enter an appropriate minute order.

13. 16-21328-B-13 DEF-4 — GABRIEL GOMEZ AND ANGELICA CERVANTES, David Foyil — MOTION TO MODIFY PLAN, 4-20-18 [97]

Tentative Ruling: The Motion to Confirm Second Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state that Section 1.02 should not be checked and is a clerical error.

The Trustee objects to plan confirmation on grounds that Section 1.02 of the form plan has been checked, indicating that there are nonstandard provisions. There are no nonstandard provisions and no section 7 in the plan filed April 20, 2018.

Debtors filed a response stating that Section 1.02 should not have been checked and was a clerical error.

Provided that the order confirming state that Section 1.02 should not have been checked, the modified plan filed April 20, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

14. 18-22029-B-13 GARY VALDEZ
JPJ-1 Gabriel E. Liberman
Thru #15

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-9-18 [21]

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

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

The Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed April 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

15. 18-22029-B-13 GARY VALDEZ
NRK-2 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF PLAN BY APPLE CREEK APARTMENTS CALIFORNIA, LLC
5-7-18 [17]

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #14. However, if the issue at Item #14 is resolved at the time of the hearing, the plan may be in a position to be confirmed

Creditor Apple Creek Apartments California, LLC ("Creditor") objects to confirmation three grounds.

First, Creditor asserts that Debtor is not eligible for Chapter 13 relief because he exceeds the debt limit of $394,725. The Debtor lists total unsecured debts of $373,618.52, which is $21,106.48 below the jurisdictional threshold in a Chapter 13 case. *See* dkt. 12, p. 2, ln. 3. However, according to the Creditor, the Debtor has understated Creditor's debt (which is listed under "The Alexander Apartments") at $4,700.97 even though the total claim amounts to $76,736.87. *See* Schedule E/F, dkt. 12, p. 40. *See also* Claim No. 9.

Second, Creditor asserts that the plan proposes to pay a distribution of $0 to unsecured creditors while allowing the Debtor to retain the proceeds from a contingent, unliquidated claim valued by the Debtor at approximately $200,000, in violation of 11 U.S.C. § 1325(b)(1)(B). In his schedules, the Debtor has valued his claim based on a cross-complaint filed in *Vista Torre dba Woodland Towers v. Gary Valdez* at approximately $200,000. Creditor contends that the Debtor's plan fails the "best interests of creditors" test since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Third, Creditor asserts that its claim is nondischargeable due to defalcation of funds

pursuant to 11 U.S.C. § 523(a)(4) (and not § 362(a)(4) as stated in Creditor's motion).

Opposition by Debtor

Debtor responds to Creditor's objections as stated below.

First, Debtor asserts that he does not exceed the debt limitation and is therefore eligible for Chapter 13 relief under 11 U.S.C. § 109(e). Debtor states that the debt owed to Creditor is *contingent*, liquidated, and unsecured and states that it is Creditor's own position that the debt is contingent rather than noncontingent. *See* dkt. 17, p. 3, ln. 5. Debtor asserts that the debt is contingent because the pending state court litigation that is the basis of this claim has not been adjudicated. Debtor states that Creditor may file a motion for relief from stay to proceed with the state court litigation. Debtor also contends that when determining eligibility, the bankruptcy court should only look beyond the schedules originally filed when the case has not been filed in good faith. Since the Creditor did not raise a bad faith objection, Debtor argues that this court should not look beyond the originally filed schedules to determine eligibility.

Second, Debtor states that his plan is proposed in the best interest of creditors. Debtor asserts that the cross-complaint is owned by BBC Services, Inc. If the cross-complaint is successful and renders proceeds valued at $200,000, Debtor contends that the value of Debtor's asset, BBC Services, Inc., is nonetheless below zero since the corporation's liabilities are $712,075.17. Therefore, according to the Debtor, there are no non-exempt assets requiring a dividend to be paid to allowed, general unsecured creditors.

Third, Debtor contends that the Creditor is not prohibited from filing an adversary proceeding to determine nondischargeability of its debt but that such an allegation is not grounds to object to confirmation of the plan.

Discussion

The court focuses its discussion on the issue of Debtor's eligibility to seek Chapter 13 relief and Creditor's objection to confirmation of Debtor's plan on that basis. If necessary, "[t]he bankruptcy court has the inherent power to sua sponte dismiss a case if the debtor is not eligible for relief." *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 917 (9th Cir. BAP 2006).

Chapter 13 eligibility is determined by § 109(e) of the Bankruptcy Code, which states that "[o]nly an individual . . . that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than [$394,725.00] . . . may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e). Extensive inquiries and evidentiary hearings need not dominate in the eligibility determination analysis. *Guastella*, 341 B.R. at 918. Indeed, the Ninth Circuit has made clear that Chapter 13 eligibility is normally determined as of the petition date by a review of a debtor's originally-filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). It is equally clear that the court looks beyond the schedules to determine Chapter 13 eligibility only when a bad-faith objection is raised. *Guastella*, 341 B.R. at 918; *Martindale v. Meenderinck (In re Meenderinck)*, 2006 WL 6810973, *5 (9th Cir. BAP 2006) ("Generally, only if there are allegations of bad faith does Ninth Circuit law allow the court to look past the schedules to other evidence in evaluating the claims amount.").

No party in interest has raised a bad-faith objection to confirmation of the Debtor's plan, or for any other reason. Therefore, the court need not - and will not - look beyond the Debtor's originally-filed Schedules to determine the Debtor's Chapter 13 eligibility. And because the Schedules reflect noncontingent, liquidated, unsecured debts below the § 109(e) statutory threshold, they suffice to establish the Debtor's

eligibility for Chapter 13 relief.[1]

That said, even if Creditor's objection could somehow - or ever - be construed to include a bad-faith objection, the court would nevertheless conclude that the Debtor remains eligible for Chapter 13 relief because Creditor's claim - and thence Debtor's corresponding unsecured debt - was unliquidated and contingent on the petition date. *See Guastella*, 341 B.R. at 918 (when looking beyond the schedules eligibility is still determined as of petition date). Consequently, the unsecured debt that forms the basis of Creditor's claim would in any event not count in the § 109(e) eligibility analysis. Creditor's own objection illustrates these points.

Creditor's claim - and thence the Debtor's corresponding unsecured debt - was unliquidated on the petition date. A debt is "liquidated" only if the amount of the debt is readily determinable. *Slack v. Wilshire Ins. Co. (In re Slack*), 187 F.3d 1070, 1073 (9th Cir. 1999). Whether a debt is readily determinable depends on whether the amount is easily calculable or whether an extensive hearing, contested proceedings, and substantial evidence is needed to determine the amount of the debt. *Id.* at 1073-1074. True, that a claim is disputed does not per se exclude it from the eligibility calculation under § 109(e) since a disputed claim is not necessarily unliquidated. *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 874 (9th Cir. BAP 2002); *see also In re Mendenhall*, 2017 WL 4684999, *2 (Bankr. D. Idaho 2017). On the other hand, if the dispute itself makes the claim difficult to ascertain or prevents the ready determination of the amount due, the debt is unliquidated and excluded from the § 109(e) computation. *Ho*, 274 B.R. at 874.

The Debtor is liable to Creditor for payments that Creditor makes to the subcontractors that Creditor alleges the Debtor failed to pay and then only to the extent of Creditor's payment to the subcontractors. *See* dkt. 17 at 2:16-18. As Creditor aptly points out, Creditor itself did not know the amount of its liability to unpaid subcontractors on the petition date. That is because, as Creditor also states, when the petition was filed there was pending at least one "action for the foreclosure of mechanic's lien" in which the mechanic's lien claimant "ha[d] already rejected [a settlement] offer." Dkt. 17 at 2:21-22, 26-27. Thus, not only was the amount of Creditor's liability - and thence the Debtor's corresponding unsecured debt - subject to determination in a contested proceeding that will require substantial evidence but, because Creditor offered to settle with the unpaid subcontractor, the amount of Creditor's liability for purposes of its claim - and thence the Debtor's corresponding unsecured debt - remained in flux on the petition date.[2]

The Debtor's liability to Creditor was also contingent on the petition date. The term "contingent" is not defined in the Bankruptcy Code. However, courts have used the "triggering event test" to differentiate between contingent and noncontingent liabilities to determine Chapter 13 eligibility under § 109(e). *In re All Media Properties, Inc.*, 5 B.R. 126 (Bankr. S.D. Tex. 1980). "[A] creditor's claim is not contingent when the 'triggering event' occurred before the filing of the chapter 13 petition." 2 Collier on Bankruptcy ¶ 109.06[2][b] (16th ed. 2011). For example, a judgment establishing liability against a debtor, entered prepetition, is not a contingent debt for purposes of determining eligibility under section 109(e). *Imagine Fulfillment Servs., LLC v. DC Media Capital, LLC (In re Imagine Fulfillment Servs., LLC)*, 2013 Bankr. LEXIS 878, at *25-26 (Bankr. C.D. Cal. 2013).

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[1]That unsecured debt might increase from what is scheduled is not relevant for eligibility purpose. Because eligibility is determined as of the petition date, post-petition events that result in adjustments to debts do not affect or alter the initial eligibility inquiry. *See In re Harwood*, 519 B.R. 535, 539-540 (Bankr. N.D. Cal. 2014) (Ninth Circuit citations omitted); *see also In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010).

[2]And for that reason, Creditor's argument that the debt is subject to ready determination because it is contractual is unavailing. Creditor apparently does not view itself - and thence the Debtor - liable for the entire amount claimed to be due.

There is no prepetition judgment against the Debtor. And as the Debtor points out, it may be that he is not liable for the alleged payments that Creditor claims are due unpaid subcontractors. Or it may be that Creditor is liable for those payments. The point is, the Debtor's liability in both instances was not fixed prepetition and a determination of that liability can only be established through further litigation which - as Debtor also notes - Creditor may potentially pursue upon a request for relief from the automatic stay.

In any case, and to reiterate, no party in interest has raised a bad-faith objection. Therefore, the court will not look beyond the Debtor's originally-filed Schedules to determine the amount of noncontingent, liquidated, unsecured debt for purposes of the Debtor's Chapter 13 eligibility. And inasmuch as those Schedules reflect noncontingent, liquidated, unsecured debt below the § 109(e) statutory threshold as of the petition date, the Debtor is eligible for Chapter 13 relief. Accordingly, Creditor's objection to Debtor's Chapter 13 ineligibility - and Creditor's objection to confirmation of the Debtor's plan on that basis - are overruled.

As to the second and third objections to confirmation raised by the Creditor, the Debtor's responses are well taken and the Creditor's second and third objections are also overruled.

Nonetheless, the plan filed April 4, 2018, is not confirmed for reasons stated at Item #14. However, if the condition stated at Item #14 has been satisfied, there being no other objection to confirmation, the plan will be ordered confirmed.

The court will enter an appropriate minute order.

16. 18-22032-B-13 JPJ-1 **Thru #17**
BARBARA GIAMMARCO
Lucas B. Garcia
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-10-18 [21]

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

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

First, the Debtor did not appear at the meeting of creditors set for May 3, 2018, as required pursuant to 11 U.S.C. § 343.

Second, 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).

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

Fourth, the plan cannot by fully assessed for feasibility. In Class 1, the arrearage dividend is listed as "see additional provisions" but the Nonstandard Provision in the plan does not list an arrearage dividend for the Seterus claim. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the terms for payment of the Debtor's attorney's fees are unclear. At Section 2.07, the plan specifies a monthly payment of $0.00 for administrative expenses. 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.

Sixth, Debtor's attorney's fees in the amount of $7,690.00 exceed the maximum fee permitted in nonbusiness cases. This is a nonbusiness case and the maximum fee is $4,000.00.

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

Seventh, the filing date of a previous case needs to be corrected in the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed April 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

17. 18-22032-B-13 LBG-1
BARBARA GIAMMARCO
Lucas B. Garcia
CONTINUED MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO IMPOSE AUTOMATIC STAY
4-5-18 [8]

Tentative Ruling: This matter was continued from May 1, 2018, and again from May 15, 2018, to allow the Debtor additional time to file a declaration from her brother in support of her motion to impose the automatic stay.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) (and not § 362(c)(3) as stated in the motion) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy active in the last 12 months was dismissed on August 1, 2017, after Debtor failed to cure her delinquency in plan payments (case no. 16-28365, dkt. 59). The Debtor's second bankruptcy active in the last 12 months was dismissed on January 21, 2018, after Debtor failed to cure her delinquency in plan payments and failed to file an amended plan (case no. 17-25759, dkt. 36).

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

Discussion

The Debtor does not explain why the previous cases were filed. The Debtor does state, however, that the instant case was filed to prevent the foreclosure of her residence. The Debtor also asserts that her circumstances have substantially changed from her two prior bankruptcy cases because she learned from her brother, who attends to their late mother's estate, that she stands to receive 50% of their mother's assets. Debtor states in her declaration that she does not yet know the amount, but that her brother is confident that the asset will be enough to satisfy the arrears on Debtor's mortgage and allow her to keep her home. *See* dkt. 10, p. 2.

In the Debtor's declaration filed May 8, 2018 (dkt. 19), Debtor acknowledges that she fell behind on plan payments in the previous two cases. As to the 2016 dismissed case, Debtor states that she fell behind on payments because she did not remember that plan payments went into effect immediately and she did not know that her attorney could change the plan so that she could catch up on payments. As to the 2017 dismissed case, Debtor states that she was not emotionally or financially prepared for the fall out of her mother's passing and did not handle her affairs well by the end of the year.

While the Debtor asserts that there has been a substantial change in her financial affairs due to the anticipated assets she will receive from her mother's estate, the Debtor still provides no evidence of this other than hearsay evidence in her declaration. As the court raised at the previous two hearings and as the court requested at the last hearing, the Debtor has not provided a declaration from her brother that states Debtor will receive 50% of her mother's estate or that it is sufficient to satisfy the arrears on Debtor's mortgage.

While the court finds credible Debtor's assertions that the stresses of her mother's passing are over and will not hinder her in performing her obligations as a debtor, the Debtor still has not offered sufficient explanation from which the court can conclude that her financial circumstances have changed aside from the hearsay evidence of what her brother stated she will receive. The Debtor has not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion to extend the automatic stay is denied without prejudice.

The court will enter an appropriate minute order.

18.	17-22634-B-13 JPJ-1	RANDY RICHARDSON AND JACQUELYN W. Steven Shumway	CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE 3-30-18 [86]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) 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 continue this motion to July 10, 2018, at 1:00 p.m. to be heard in conjunction with Debtors' motion to confirm modified plan.

On May 16, 2018, the court entered an order requiring Debtors to file, serve, and set for hearing a modified plan and motion to confirm it by June 5, 2018, at 1:00 p.m. A modified plan and motion to confirm it were filed, served, and set on May 30, 2018. Therefore, this matter will be further continued to the modified plan confirmation hearing date of July 10, 2018, at 1:00 p.m.

The court will enter an appropriate minute order.

19. 18-21637-B-13 GREGARY/PATRICIA ARENDT — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Thomas L. Amberg — 5-9-18 [22]

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

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on May 10, 2018. The confirmation hearing for the amended plan is scheduled for July 10, 2018. The earlier plan filed March 28, 2018, is not confirmed.

The court will enter an appropriate minute order.

20. 17-24048-B-13 RANDY/PATRICIA PELFREY MOTION TO SUBSTITUTE PARTY
SJD-2 Susan J. Dodds 4-24-18 [35]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The Suggestion of Death and Motion for Substitution 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)(B) 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, to continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Randy Pelfrey gives notice of death of his wife and Co-Debtor Patricia Pelfrey and requests the court substitute Randy Pelfrey in place of his 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. Debtor states that no party will be prejudiced by this substitution and the case will remain on the same footing as if the death had not occurred. Debtor remains a petitioner and is able to prosecute this case in a timely and reasonable manner. Debtor asserts that continuity will be maintained in the case to the benefit of all parties and administration of the bankruptcy estate.

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 deceased Debtor's certification otherwise required for entry of a discharge is waived. The court grants the motion.

The court will enter an appropriate minute order.

21.	18-20749-B-13 MJD-1	JACKIE MELLOW Matthew J. DeCaminada	OBJECTION TO CLAIM OF CAPITAL ONE, N.A., CLAIM NUMBER 2 4-10-18 [22]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

Debtor's Objection to Allowance of Claim 2-1 of Capital One, N.A. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 2-1 of Capital One, N.A. and the claim is disallowed in its entirety.

Jackie Mellow ("Debtor") requests that the court disallow the claim of Capital One, N.A. ("Creditor"), Claim No. 2-1. The claim is asserted to be unsecured in the amount of $640.39. Debtor asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about October 3, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 12, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

22. 13-32857-B-13 PAUL/VALERIE WILLOVER MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 4-24-18 [30]

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) 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 24, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

23. 18-22073-B-13 JPJ-1 — JOSE GALINDO, Steele Lanphier — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-10-18 [14]

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

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

First, the Debtor has not provided the Trustee with a copy of his 2016 California 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 served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, feasibility depends on the granting of a motion to value collateral for Franchise Tax Board. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to 11 U.S.C. § 3015-1(j).

The plan filed April 6, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

24. 18-21679-B-13 JPJ-1 — BRIAN/ELIZABETH BOYER, Douglas B. Jacobs — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-17-18 [13]

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

The court's decision is to overrule the objection and confirm the plan provided that the order confirming state the corrected fee of $1,370.00 paid to the attorney prior to the filing of the petition.

The Chapter 13 Trustee objects to confirmation on two grounds.

First, the Trustee states that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Joint Debtor's projected disposable income is not being applied to make payments to unsecured creditors. According to the Trustee, Joint Debtor's income appears to be understated on Form 122C-1 at Line #2 and that her average monthly income is $7,924.82 and not $5,899.00 as listed. The Trustee asserts that the Debtors' must pay their unsecured, non-priority creditors in full and not at 39%.

Second, the Trustee states that the Debtors have not amended their Statement of Financial Affairs #16 or their Form 2030 Compensation Statement of Attorney for the Debtor(s) to show the correct pre-petition attorney's fees payment of $1,370.00 instead of $1,340.00.

Response by Debtors

Debtors filed a response stating Joint Debtor's income is not understated on Form 122C-1 because her wages are for a 9-month period rather than a 12-month period. Debtors state that Joint Debtor does not work three months in the calendar year when school is out. Thus, to get Joint Debtor's monthly income, Debtors divided the last 6-month pay stub by 6 then multiplied by 9.

As to the discrepancy of $30.00 in the amount paid to the attorney prior to the filing of this case, Debtors request this $30.00 difference to be corrected in the order confirming.

Provided that the order confirming correct the attorney's fee paid pre-petition, the plan filed March 22, 2018, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

The court will enter an appropriate minute order.

25. 18-21785-B-13 DAVID BUTOROVICH
JPJ-1 David Ritzinger

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-10-18 [22]

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

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

First, the Debtor and his attorney did not appear at the meeting of creditors set for May 3, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,787.00, which represents 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,787.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with requested copies of certain items related to Debtor's net income from rental property and/or operation of a business including, but not limited to, a completed business examination checklist, income tax returns for the two-year period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. It cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fourth, also related to Debtor's net income from rental property and/or operation of a business, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

Fifth, the terms for payment of the Debtor's attorney's fees are unclear. At Section 2.07, the plan specifies a monthly payment of $0.00 for administrative expenses. 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.

Sixth, the Debtor has not served upon the Trustee three (3) Class 1 Checklists and Authorization to Release Information to Trustee for Specialized Loan Servicing, USAA Federal Savings Bank, Villa Knolls Homeowners Association. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Seventh, the Debtor's credit counseling certificate was not received during the 180-day period preceding the date of the filing of the petition. Debtor's petition was filed on March 27, 2018, and the briefing was received after on April 27, 2018. Because the briefing was not timely received, Debtor would not be eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h).

The plan filed April 9, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

26. 18-21786-B-13 JPJ-1 — ALAN/CHAREN JOY CASTRO — Carl Gustafson — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-9-18 [18]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are 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 objection to confirmation, the plan filed March 28, 2018, will be confirmed.

The court will enter an appropriate minute order.

27. 17-25090-B-13 JPJ-2 — MARTHA RAMIREZ, Peter G. Macaluso — MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 4-30-18 [68]

Tentative Ruling: The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted or in the alternative dismissed based on the following grounds.

First, Movant asserts that the Debtor has failed to prosecute this case causing unreasonable delay which is prejudicial to creditors pursuant to 11 U.S.C. §1307(c)(1). The court had sustained the Trustee's and Sutter County's objections to confirmation on October 3, 2017. Movant states that the Debtor has not taken further action to confirm a plan in this case.

Second, Debtor is $4,000.00 delinquent in plan payments, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $4,000.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Movant states that conversion of this case to a Chapter 7, rather than dismissal, is in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c) because the total value of non-exempt property in the estate is approximately $1,423,333.13 as a result of the available equity in the Debtor's real properties (minus 8% cost of sale) based on Schedules A/B and C filed August 15, 2017.

Response by Debtor

Debtor has filed a response stating that she will file an amended plan and be current on plan payments prior to the date of the hearing on this motion. A review of the court's docket shows that the Debtor filed an amended plan on May 31, 2018, and that the confirmation hearing is set for July 10, 2018.

Discussion

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 not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *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).

Provided that Debtor is current on plan payments by the date of the hearing on this motion as stated in Debtor's response, cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed an amended plan and has not caused unreasonable delay that is prejudicial to creditors. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

28. 17-27891-B-13 JOHN REAL MOTION TO CONFIRM PLAN
FF-1 Diane Eggler 4-23-18 [39]

CONTINUED TO 6/12/18 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S OBJECTION TO CLAIM NO. 3 FILED BY MERCY SAN JUAN HOSPITAL AND ATTORNEY FEE IN DEFENSE THEREOF.

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The court will enter an appropriate minute order.

29. 17-22293-B-13 SYLVIA KNIGHT
APN-1 Mohammad M. Mokkaram

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY 4-30-18 [31]

VW CREDIT LEASING, LTD. VS.

Final Ruling: No appearance at the June 5, 2018, hearing is required.

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

VW Credit, Inc., servicing agent for VW Credit Leasing, LTD ("Movant"), seeks relief from the automatic stay with respect to an asset identified as a leased 2016 Volkswagen Jetta, VIN ending in 7892 (the "Vehicle"). The moving party has provided the Declaration of Jennifer Clothier to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Clothier Declaration provides testimony that the Vehicle is a lease and that the purchase option, not including excess mileage and/or excess wear and tear on the property, is $21,265.46.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow VW Credit, Inc., servicing agent for VW Credit Leasing, LTD, 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.

The request for relief from stay as to non-filing co-debtor, Ahlyce Hill, who is liable on such debt with the Debtor shall be granted pursuant to 11 U.S.C. § 1301(c).

Attorneys' Fees Requested

Although requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.