UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 17, 2015 at 10:00 a.m.

1.	15-22805-B-13 JPJ-2	AHMED CHARTAEV Pro Se	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-20-15 [31]

Final Ruling: No appearance at the June 17, 2015 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 exemptions are disallowed in their entirety.

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

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

(Emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

2. 15-24206-B-13 LEON DOBBINS
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF CU FACTORY BUILT LENDING
6-3-15 [12]

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

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

The motion filed by Leon Dobbins ("Debtor") to value the secured claim of CU Factory Built Lending ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 99 Legend Single-wide mobile home ("Mobile Home"). The Debtor seeks to value the Mobile Home at a replacement value of $7,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Opposition by Creditor

Creditor filed an opposition on June 10, 2015. Creditor asserts that current balance due is $14,662.86 and that the Debtor has not made the June 2015 payment. Creditor objects to Debtor's valuation on the basis that the Debtor is not qualified to make a determination as to useful life, the Debtor's declaration is vague as to what is meant by "deferred maintenance" causing the alleged reduction in value, and according to the NADA Manufactured Housing Appraisal Guide, a market report which the court accepts as some evidence of value, the value of this property is $15,426.67. Creditor also asserts that the Property is a 2000 year model and not a 1999 year model as stated and valued by the Debtor.

The court agrees with the Creditor in that the Debtor has not shown how he is qualified to determine the unit's useful life or explained what "deferred maintenance" is or may be that causes a reduction in value. Even if the Debtor were to satisfy the court's concern on those two matters, the court gives no weight to the Debtor's valuation of a 1999 model-year unit when the Property is actually a 2000 model-year unit, as confirmed by the Arkansas title certificate submitted by Creditor.

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 Debtor bears the burden of proof (production and persuasion) under 11 U.S.C. § 506(a)(2). The Debtor has failed to meet his burden. The Debtor failed to explain how he is qualified to determine the useful life of the Property and what "deferred maintenance" is or how it reduces the Property's value. More important, the Debtor has valued a 1999 model-year unit when the Property is actually a 2000 model-year unit.

The motion to value is denied without prejudice.

3. 14-32311-B-13 LA KEISHA MATLOCK MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 5-4-15 [50]

DEBTOR DISMISSED: 05/17/2015

Final Ruling: No appearance at the June 17, 2015 hearing is required.

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

4. 14-30114-B-13 ANDRES/GLORIA ULLOA MOTION TO MODIFY PLAN
AFL-1 Ashley R. Amerio 5-6-15 [30]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated April 28, 2015, 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.

The plan payment in the amount of $904.00 for 31 months does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the trustee's fee is $920.21. The plan fails to comply with Section 4.02 of the mandatory form plan.

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

5. 15-23022-B-13 CRISTINO VIBAT
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-27-15 [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)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the claim of Select Portfolio Services, Inc. is mis-classified as a Class 1 claim.

Second, feasibility of the plan depends on the Debtor obtaining a loan modification with Select Portfolio Services, Inc. The Debtor provides no evidence that the lender has consented to or is considering a loan modification.

Third, the plan payment in the amount of $2,064.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,106.38. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, the Debtor is delinquent to the Trustee in the amount of $2,064.00, which represents approximately one plan payment. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

6. 12-23935-B-13 STACEY COUNCILMAN
CK-3 Catherine King

MOTION FOR COMPENSATION FOR CATHERINE KING, DEBTOR'S ATTORNEY
5-27-15 [54]

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 for compensation.

Catherine King ("Applicant"), the attorney to Chapter 13 Debtor Stacey Councilman ("Client"), makes a request for the allowance of $807.40 in additional fees and $30.00 in additional expenses. The period for which the fees are requested is for approximately March 14, 2015 through March 28, 2015. Since it appears that the Applicant did not consent to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines") (Dkt 1, p. 39 and Dkt. 17), the court will not analyze the request for additional compensation in light of the "no-look" fees and *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus).

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 56).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. Compensation for the paralegal work performed by Denise Crabill is also appropriate in light of *Missouri v. Jenkins*, 491 U.S. 274 (1989). The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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

Additional Fees	$807.40
Additional Costs and Expenses	$ 30.00

7. 13-32737-B-13 CATHERINE PORTER MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 5-8-15 [45]

Final Ruling: No appearance at the June 17, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 8, 2015, 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 has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 8, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

8. 15-23037-B-13 JPJ-1 **Thru #9**
EDGAR LOPEZ AND CLAUDIA SANCHEZ
Stephen N. Murphy
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-27-15 [41]

Final Ruling: No appearance at the June 7, 2015 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.

9. 15-23037-B-13 MMN-2
EDGAR LOPEZ AND CLAUDIA SANCHEZ
Stephen N. Murphy
OBJECTION TO CONFIRMATION OF PLAN BY PACIFIC ESTATES
5-22-15 [32]

Tentative Ruling: The Objection to Confirmation of Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

Pacific Estates ("Creditor") asserts that Debtors' plan filed April 15, 2015, tries to assume a lease under 11 U.S.C. § 1322(b)(7) that does not exist. Debtors' lease was terminated in 1998 and they now have a month-to-month tenancy. Moreover, the Debtors violated the month-to-month tenancy by failing to pay rent, which resulted in a notice to quit. In response, the Debtors assert that their plan assumes a month-to-month tenancy and not the original lease.

The Debtors can assume a month-to-month tenancy; however, any benefit from the assumption of such a lease is minimal since a month-to-month lease remains subject to termination even if assumed. *See In re Premier Automotive Services, Inc.*, 2006 WL 4711334 at *6 (Bankr. D. Md. 2006); *In re Shaw*, 1994 WL 803495 (Bankr. N.D. Ala. 1994). Any termination in this case, however, must be done in accordance with applicable law. Additionally, on June 15, 2015, the court enter an amended civil minute order terminating and vacating the automatic stay of 11 U.S.C. § 362(a) to allow Creditor to commence and/or continue unlawful detainer proceedings against the Debtors and/or to terminate their month-to-month lease.

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

10. 12-21947-B-13 ALLAN/NATALIE ANGELMAN CONTINUED MOTION TO MODIFY PLAN
BLG-5 Chad M. Johnson 2-27-15 [96]
Thru #11

Tentative Ruling: The Motion to Confirm Second Modified Plan Filed on February 27, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Debtors having filed a modified Chapter 13 plan on April 29, 2015, the motion to confirm the plan dated February 27, 2015, is denied as moot. The new plan is set for hearing on this calendar as Item #11.

11. 12-21947-B-13 ALLAN/NATALIE ANGELMAN MOTION TO MODIFY PLAN
BLG-6 Chad M. Johnson 4-29-15 [110]

Tentative Ruling: The Motion to Confirm Second (sic) Modified Plan Filed on April 29, 2015, 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, as the Debtors did not make the March 25, 2015, payment, the Debtors are delinquent to the Trustee in the amount of $4,338.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have failed to carry their burden of showing that the plan complied with 11 U.S.C. § 1325(a)(6). Furthermore, the court's order entered on April 15, 2015 (Dkt. 109) required the Debtors to be current at the time of the June 17, 2015, continued hearing.

Second, the amount of post-petition arrears as stated in the plan filed April 29, 2015, are incorrectly stated at $13,359.76. The Trustee's records show that the correct amount is $13,539.76.

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

12. 13-35347-B-13 ANGEL/KARINA GARCIA CONTINUED MOTION TO MODIFY PLAN
RJ-4 Richard L. Jare 4-2-15 [93]

Tentative Ruling: The Motion to Modify 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)(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.

Had the Debtors not filed a second modified plan on June 15, 2015, two days before this hearing, the court's decision would have been to not permit the requested modification and not confirm the first modified plan set for hearing on June 17, 2015.

First, the Debtors are delinquent to the Trustee in the amount of $140.00, which represents approximately 1 partial plan payment. The Debtors do not appear to be able to make the plan payments proposed.

Second, the actual amount of Debtors' post-petition mortgage arrears is $2,553.50. While the Debtors propose that plan payment will increase to $1,676.00 from $1,600.00 and the monthly dividend will increase to $74.00 from $60.00 beginning in month 25 of the plan in order to pay the post-petition mortgage arrears in full, this increase does not appear feasible pursuant to 11 U.S.C. § 1325(a)(6).

Third, the Debtors state that they will make a one-time payment of $230.00 after the entry of the order approving this modified plan. However, Debtors have not specified exactly when the Trustee can expect to receive this payment from the Debtors. Without a specific deadline of a month in which the Debtors will make this payment, feasibility of the plan cannot be property assessed.

Fourth, the plan does not properly account for all payments the Debtors have paid to the Trustee to date.

Fifth, the Debtors's proposed increase to their plan payments to $1,676.00 hinges on the Debtors receiving a tax refund of approximately $5,000.00. However, the Debtors have not provided any evidence or documentation as to why they anticipate receiving this amount for the 2015 tax year. Additionally, the tax refund does not appear to adequately supplement the Debtors' increased plan payment or serve as a reliable source of income for the Debtors. The court does not consider an undetermined and uncertain tax refund to be reliable source of funding.

Sixth, it does not appear that the Debtors are putting forth their best efforts in the filing of this plan since the Debtors are not paying all of their monthly net income into the plan, have commenced making voluntary retirement contributions of $198 per month within the last 2 months, and have substantially increased their spending on clothing, laundry, and dry cleaning from $30 per month to $280 per month.

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

In any event, the filing of the second amended plan on June 15, 2015, renders the hearing set for June 17, 2015, and the Trustee's objections to the modified plan set for hearing on that date moot.

13. 14-31449-B-13 ELIZABETH HERRERA MOTION TO CONFIRM PLAN
CAH-2 C. Anthony Hughes 5-4-15 [52]

Final Ruling: No appearance at the June 17, 2015 hearing is required.

The Motion to Confirm the Second Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The 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 May 4, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

14. 10-32655-B-13 VICTOR/JESSIE AVILA
SDB-1 W. Scott de Bie

MOTION TO VACATE DISMISSAL OF CASE
5-26-15 [84]

DEBTOR DISMISSED: 03/09/2015
JOINT DEBTOR DISMISSED: 03/09/2015

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

The court's decision is to grant the motion for reconsideration and to vacate the order dismissing the case.

Debtors filed their Chapter 13 bankruptcy on March 14, 2010, and at the time was represented by attorney William Bullis. Mr. Bullis represented the Debtors until June 10, 2013, when he was suspended from the practice of law. Mr. Bullis was disbarred from the practice of law on or about November 28, 2013.

From June 10, 2013, until May 22, 2015, the Debtors were without legal counsel. However, despite the loss of their attorney almost two years ago, the Debtors performed as required under their confirmed plan until February 2015. Debtors' plan required payments of $2,625.47 per month. Through February 2015, the Debtors paid a total of $147,359.62 into their plan.

The Debtors were delinquent $10.94 for the payments in December 2014 and January 2015. In addition, they were delinquent in slightly less than one plan payment at $2,607.39 in September 2014. Because of the delinquency, the Trustee filed a Notice of Default and Application to Dismiss on January 28, 2015. This court subsequently dismissed the case on March 9, 2015.

The court finds that the Debtors' request is supported by both cause and excusable neglect. Cause exists based on the Debtors' compliance with and performance under their confirmed plan without the aid of counsel and the lack of counsel to explain the circumstances of their otherwise minimal delinquency and default. Debtors also attempted to cure the delinquency in February and March of 2015 and the amounts they did pay during those months actually put the Debtors ahead $67.14. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. In fact, if dismissal is vacated the Debtors are prepared to make a payment necessary to complete the terms of their plan, which means the plan will be fully-funded with unsecured creditors receiving no less than 16%. The Debtors did not delay in seeking relief. After their case was dismissed they met with new counsel and new counsel acted promptly. Delay was excusable given the Debtors' lack of counsel and their lack of understanding of the effect of their delinquency and the consequences thereof. The Debtors have acted in good faith not only by attempting to cure the default on their own but also by offering to make the payment necessary to complete their plan if dismissal is vacated.

Given the unique circumstances of the Debtors, their faithful performance of plan payments for approximately 2 years without an attorney, their subsequent efforts to make up for the shortfall in February 2015 and March 2015, and their ability to immediately pay the estimated amount of $7,834.00 to complete their plan, the court will grant the motion to reconsider and vacate the order dismissing the case.

15. 15-22956-B-13 MARSHALL MASSON AND LISA MOTION TO CONFIRM PLAN
GDC-1 ACKERMAN-MASSON 5-1-15 [25]
Thru #16 Guy David Chism

WITHDRAWN BY M. P.

Final Ruling: No appearance at the June 17, 2015 hearing is required.

The Debtors having filed a Notice of Withdrawal for the pending Motion to Confirm First Amended Chapter 13 Plan Dated April 27, 2015, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

16. 15-22956-B-13 MARSHALL MASSON AND LISA COUNTER MOTION TO DISMISS CASE
GDC-1 ACKERMAN-MASSON 6-3-15 [41]
Guy David Chism

Final Ruling: No appearance at the June 17, 2015 hearing is required.

The Debtors having filed a Notice of Withdrawal for the Motion to Confirm First Amended Chapter 13 Plan Dated April 27, 2015 (see Item #15), the court's decision is to overrule as moot the Opposition, and conditionally deny Counter Motion to conditionally dismiss.

17. 15-23758-B-13 SCOTT/KATHLEEN PHILLIPS — MOTION TO AVOID LIEN OF CIT SMALL BUSINESS LENDING CORPORATION
MRL-1 Mikalah R. Liviakis — 6-1-15 [14]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Avoid Judicial Lien Held by CIT Small Business Lending Corporation, A Delaware Corporation 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 avoid judicial lien.

This Motion requests an order avoiding the judicial lien of CIT Small Business Lending Corporation ("Creditor") against property of Scott Phillips and Kathleen Phillips ("Debtors") commonly known as 269 American River Canyon Drive, Folsom, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $208,119.76. An abstract of judgment was recorded with Sacramento County on October 28, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $472,000.00 as of the date of the petition. The unavoidable consensual liens total $337,625.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $134,375.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

18. 15-24164-B-13 JAKE/BRENDA ESCALANTE MOTION TO EXTEND AUTOMATIC STAY
FF-1 Gary Ray Fraley 5-26-15 [8]

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

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

Jake Escalante and Brenda Escalante ("Debtors") 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 Debtors' prior bankruptcy case was dismissed on May 8, 2014, after Debtors failed to make ALL plan payments in the amount of $18,858.45 (Case No. 2014-24069, Dkts. 38, 42). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was 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 Debtors assert that the dismissal of their prior case was not due to willful inadvertence or negligence. Given that no plan payments were made, the court is not persuaded by that argument. Debtors state that when they had filed their previous bankruptcy case, the IRS put a lock on how much was deducted from their paychecks. Debtors state that this lock forced them to over deduct from co-Debtor Jake's pay stubs. Debtors were under the impression that the lock would be released once they filed their Chapter 13 petition. The lock was not released, and the IRS has contacted the Debtors and informed them that the lock will not be released until May 2015. Although the lock was not released as of May 26, 2015, the Debtors' new Chapter 13 plan takes this over-deduction into consideration and Debtors assert that it will allow them to have lower plan payments.

Additionally, the Debtors state that during their previous bankruptcy case, they were 6 months past due on their car registration and utility bills. Debtors state that they neglected to provide this information to their attorney and paid these bills prior to any discussion with their attorney. The payments made on the car registration and utility bills also contributed to their delinquence in plan payments of the previous case.

Debtors assert that they have resolved these issues and are proposing a plan in the present Chapter 13 case that they believe they can afford. However, as noted above, the prior Chapter 13 was not a case in which the Debtors missed a payment, underpaid, or paid late. The Debtors made no payments at all in their prior Chapter 13 case. The Debtors' statements that they now believe they can make plan payments when previously they were unwilling or unable to do so is not clear and convincing evidence sufficient to rebut the bad faith preseumption.

The Debtors have not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is not granted and the automatic stay is not extended for all purposes and parties, unless terminated by operation of law or further order of this court.

19. 15-24470-B-13 DONNA VANDERHORST — MOTION TO VALUE COLLATERAL OF
RJ-1 Richard L. Jare — FAIRLANE CREDIT, LLC
Thru #20 — 6-3-15 [12]

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

The court's decision is to deny without prejudice the motion to value collateral of Fairlane Credit LLC.

The motion filed by Donna Vanderhorst ("Debtor") to value the secured claim of Fairlane Credit LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of 1998 Jeep Cherokee Sport ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $250.00 as of the petition filing date. As the owner, the Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

While the Debtor asserts that the amount of Creditor's secured claim is $31,488.68, the Debtor does not state when the purchase-money loan was incurred. The Vehicle is also not listed in the Schedules and no Schedule B has been filed. Thus, the court cannot determine whether the loan was incurred more than 910 days prior to the filing of the petition, or whether the Vehicle is even property of the estate. Additionally, the Debtor has not satisfied its burden of proof that the replacement value of the Vehicle is only $250.00. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is not granted.

20. 15-24470-B-13 DONNA VANDERHORST — MOTION TO AVOID LIEN OF
RJ-2 Richard L. Jare — FAIRLANE CREDIT, LLC
6-3-15 [16]

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 avoid judicial lien.

This Motion requests an order avoiding the judicial lien of Fairlane Credit, LLC ("Creditor") against the condominium property of Donna Vanderhorst ("Debtor") commonly

known as 5897 Bamford Drive, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $19,581.85. An abstract of judgment was recorded with Sacramento County on January 21, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $49,000.00 as of the date of the petition. The unavoidable consensual liens total $24,830.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $26,710.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

21.	15-22971-B-13 JPJ-1	PORFIRIO/NORMA FAJARDO Ulric N. Duverney	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-27-15 [18]

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

The court's decision is to overrule the objection and deny the motion to dismiss, subject to the Trustee confirming at the hearing that its objections are resolved.

First, Debtors' counsel sent a letter to the Trustee on May 26, 2015, that included a copy of the plan with wet signatures.

Second, Debtors forwarded to the Trustee all copies of the their pay stubs that were used in calculating the means test. Presumably, this is the income Debtors' received within the 60-day period prior to the filing of the petition.

Third, Debtors mailed to the Trustee a copy of their 2014 federal tax return on May 29, 2015.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 13, 2015, with signatures provided on the otherwise identical plan filed May 27, 2015, is confirmed.

22. 15-23473-B-13 BLG-2 | RODNEY/CHRISTINE HOLLAND
Pauldeep Bains | MOTION TO VALUE COLLATERAL OF NINO MOTORS
5-13-15 [17]

Final Ruling: No appearance at the June 17, 2015 hearing is required.

The Motion to Value Collateral of Nino Motors 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 Nino Motors at $3,242.00.

The motion filed by Rodney Holland and Christine Holland ("Debtor") to value the secured claim of Nino Motors ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a 2001 Mercedes-Benz CL-Class ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $3,242.00 as of the petition filing date. As the owner, the Debtors opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 2009, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $5,000.00. 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 $3,242.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

23. 15-22976-B-13 LUZON/CHRISTINE PASCUA
JPJ-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-27-15 [19]

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

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

The Debtors state in Schedule I that their net income from rental property is $1,200.00. The Debtors do not provide a detailed statement showing gross receipts and ordinary and necessary expenses.

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

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

24. 15-21781-B-13 JASON/SHELLY BELOTTI MOTION TO CONFIRM PLAN
RDS-2 Richard D. Steffan 4-29-15 [36]

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

The court's decision is to sustain the Trustee's objection and not confirm the first amended plan.

The Debtors are delinquent to the Trustee in the amount of $2,360.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

25. 15-23684-B-13 ALFRED/CAROLYN SHULTS — CONTINUED MOTION TO EXTEND AUTOMATIC STAY
CAH-1 C. Anthony Hughes — 5-5-15 [8]

Tentative Ruling: The Motion to Extend Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. This matter was continued from June 3, 2015, to allow Debtors to file supplemental documents or evidence in support of their motion to extend automatic stay. 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 decision is to grant in part and deny in part the motion and not extend the automatic stay as to certain creditors.

Alfred Shults and Carolyn Shults ("Debtors") seek 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 Debtors' third bankruptcy petition. The first case was filed under Chapter 13 on December 4, 2013, and was dismissed on September 2, 2014, after Debtors failed to make plan payments (Case No. 13-35366, Dkt. 61). The second case was filed under Chapter 13 on September 18, 2014, but later converted to Chapter 7, and Debtors received a discharge on March 17, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 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 Debtors 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 Debtors state that the prior Chapter 13 case was filed to provide the Debtors with an opportunity to catch up on arrears owed on their home and to continue to make the monthly payments. However, the Debtors experienced a downturn in their business and were unable to make plan payments. Their only income was from Social Security and business income. Debtors assert that they are now able to make and complete plan payments because their income has increased by renting out their pastures at $1,100.00 per month and receipt of Social Security, business income, rental income from a tenant, and income from selling farm produce.

To support this, on June 6, 2015, the Debtors submitted evidence of their business' profit and loss statements; Retirement, Survivors, and Disability Insurance letters; lease purchase option agreement with regard to the pasture; agreement with market vendor Bobby Singh; and month-to-month rental agreement with Taylor Bruner. In addition, there appears to be a rental agreement with Kayleen Bruno, as supported by the Declaration of Kayleen Bruno, although there is no rental agreement submitted as an exhibit.

Initial Opposition by Creditors Harry Miller and Leah Miller

Harry Miller and Leah Miller (collectively, "the Millers") oppose the motion on the ground that the Debtors' present bankruptcy case was not filed in good faith. According to the Millers, the Debtors have grossly underestimated the amount of arrears due to the Millers, as Class 1 creditors, and have failed to provide for future payments as they come due. Additionally, the Millers assert that the Debtors have failed to prove a substantial change in their financial or personal affairs such that

the bankruptcy will succeed.

The Millers assert a list of reasons why the automatic stay should not be extended: that the Debtors have failed to repair the mobile home located at 3501 Freshwater Lane, El Dorado, California ("Property") that was destroyed by a cut tree and thus preventing the Millers from maintaining insurance on the mobile home, that the Debtors have not obtained an occupancy permit or acquired a septic tank despite renting out a travel trailer on the property, that the Debtors have not paid the Millers since August 2012, that the Debtors are delinquent approximately $7,446.00 to El Dorado County, and that Debtors have misrepresented their income.

Initial Opposition by Creditors Rick Rogers and Lana Rogers

Rick Rogers and Lana Rogers (collectively, "the Rogers") assert nearly identical arguments as the Millers, the main difference being that the Millers and the Rogers agreed to sell to the Debtors the Property at different amounts and to receive different monthly payments under the terms of two separate promissory notes (Dkt. 20, p. 6 and Dkt. 24, p. 4).

Subsequent Opposition by the Millers and the Rogers

On June 15, 2015, the Millers and the Rogers filed additional objections stating that the Debtors' declarations filed on June 10, 2015, are based on conclusory statements and that no credible evidence has been offered in support.

The Millers and Rogers assert that the Debtors failed to address if they have obtained property insurance; that the farm income of $100.00 per month does not prove to be a substantial change in their financial situation and that they have not obtained authorization from the Millers and Rogers to conduct this type of business on the property; that the rental income of $300.00 per month does not prove that there has been a substantial change in the Debtors financial situation and that there is no evidence that the Debtors actually receive this income; that the Debtors have failed to provide any evidence that they have collected rent from Lost Coast Humane Society; and that the Debtors have failed to provide evidence that they have actually received approximately $2,223.67 per month in business income.

The court finds that the Debtors have not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay as to creditors Millers and Rogers. The Debtors have not shown by clear and convincing evidence additional income available to use to fund a plan. Further, even if the court accepts the Debtors' recent submissions as evidence of additional income available to fund a plan, the Debtors do not address, and therefore the Debtors have failed to controvert, evidence that secured creditors' collateral is uninsured, may be uninsurable, is being used in violation of the parties' agreements and applicable law, and is not current on county property taxes. These conditions existed as early as 2011 and, thus, during the Debtors' previously dismissed Chapter 13 case. Evidence of these conditions submitted by the Millers and Rogers is sufficient to establish cause for relief from the stay under 11 U.S.C. § 362(d)(1) in this case, in addition to demonstrating that as to these creditors there is no significant change in circumstances, which means that the Debtors have not demonstrated to the court by clear and convincing evidence that the automatic stay should be extended in this case as to these creditors.

Therefore, the court will impose the automatic stay as to all creditors and for all purposes except that the automatic stay is not reimposed as to creditors Millers and Rogers. *See* 11 U.S.C. § 362(c)(3)(B).

26. 11-26587-B-13 ASW-1 — ROBERTO VARGAS AND CECILIA RAMIREZ, Scott A. CoBen — MOTION FOR RELIEF FROM AUTOMATIC STAY, 5-13-15 [66]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the June 17, 2015 hearing is required.

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

The court's decision is to grant U.S. Bank, N.A.'s motion for relief from stay.

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 28087 Robin Avenue, Unit #156, Santa Clarita, California (the "Property"). Movant has provided the Declaration of Breanna Harris ("Harris Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Harris Declaration states that, on May 19, 2011, the Debtors received the Property from the original borrower, Zoila Guerra, who executed an unauthorized quit claim deed purporting to transfer full right, title, and interest and claim in the Property from the borrower to The Roberto Vargas Cestuique Trust.

Movant asserts that the original borrower and the Debtors have failed to tender 76 of the payments that have fallen due. The total amount due under the Note and the Deed of Trust as of April 25, 2015, is $344,655.61. A notice of default was recorded on April 10, 2009, and a notice of sale was published on November 26, 2013.

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

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, it appears that there is no equity in the Property. And the Debtors, who are not original borrowers, have not demonstrated the property is necessary for an effective reorganization.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property. Movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied.

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.

27. 11-20388-B-13 KELIKUPA/CASSY MATU MOTION TO MODIFY PLAN
CAH-7 C. Anthony Hughes 4-29-15 [119]

Tentative Ruling: The Motion to Confirm First 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan, provided that the order modifying plan states the following: The Debtors have paid a total of $314,269.00 into the Chapter 13 plan through May 25, 2015 (month 52). Beginning June 25, 2015, and continuing for the remaining 8 months of the 60-month plan, the Debtors shall pay $2,926.00 per month.

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

28. 15-22793-B-13 GOVIND/SAKUNTALA SAMY — OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A. 5-30-15 [26]
Thru #29 — Pro Se

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

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

The plan filed April 17, 2015, does not provide for pre-petition arrearages owed to U.S. Bank Trust, N.A. ("Creditor"). To cure the pre-petition arrearages of $127,628.34 over the term of the plan within 60 months, Creditor must receive a minimum payment of $2,127.14 per month from the Debtors through the plan. Although the Debtors do not provide for payments to the Creditor, the Debtors' plan provides for payments to the Trustee in the amount of $1,000.00 per month for 60 months. Debtors do not have sufficient funds available to cure the arrears over the term of the plan within 60 months.

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

29. 15-22793-B-13 GOVIND/SAKUNTALA SAMY — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 5-27-15 [22]
JPJ-1 — Pro Se

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

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

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $4,227.00. The total amount that will be paid to unsecured creditors is $0.00.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(6) as the Debtors' monthly net income at line 20c of Schedule J is -$2,955.00. However, the Debtors propose to make monthly plan payments in the amount of $1,000.00.

Third, the Debtors are delinquent to the Trustee in the amount of $1,000.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make the plan payment proposed.

Fourth, the Debtors did not utilize the mandatory Official Bankruptcy Forms 6I and 6J effective December 1, 2013.

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

30. 15-21694-B-13 LENZA GRUNDMAN — MOTION TO CONFIRM PLAN
JSO-1 Jeffrey S. Ogilvie — 5-4-15 [19]

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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to sustain the Trustee's objection and not confirm the first amended plan.

The plan filed May 4, 2015, does not specify a cure of the post-petition arrearages due to Rushmore Loan Management Services and Sunrise Assessment Services, LLC, including specific post-petition arrearage amounts, interest rates, and monthly dividends. Thus, feasibility of the plan cannot be fully assessed and the plan cannot be effectively administered.

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

31. 14-30613-B-13 DONALD/BROOKE HOBART — CONTINUED MOTION TO CONFIRM PLAN
JGD-2 John Downing — 4-29-15 [57]

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

The court's decision is to sustain the trustee's objection to confirmation and not confirm the first amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Second, the Debtors are delinquent to the Trustee in the amount of $2,580.00, which represents approximately 2.8 plan payments. By the time this matter is heard, an additional plan payment in the amount of $930.00 will also be due. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have failed to carry their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, feasibility of the plan cannot be determined as the terms for payment of the Debtors' attorney's fees are unclear. At Section 2.06, the plan does not specify a selection 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. Bank. P. 2002, 2016, and 2017.

Debtors filed a reply on June 2, 2015, and propose to include resolutions of the first and third objections in the confirmation order. The reply also states that Debtors will be current at the time of hearing. However, until it is confirmed that the Debtors are current, the court will not consider whether the other objections may be resolved in the confirmation order or if an amended plan is required. The court will consider those matters at the hearing. However, if the Debtors are not current, those matters will not be considered and the tentative will become the final.

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

Based on the declaration submitted by the Debtors' attorney on June 10, 2015, the court may reconsider this tentative ruling on June 17, 2015.