UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 21, 2016 at 1:00 p.m.

1.	16-22402-B-13 APN-1	GREGORY BILLIE AND EUGENIA JONES-BILLIE Steven A. Alpert	OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE 5-2-16 [13]

Tentative Ruling: The Secured Creditor, Capital One Auto Finance, A Division of Capital One, N.A.'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). 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 objecting creditor holds a security interest in a 2012 Nissan Altima ("Vehicle"). The Debtors had entered into a written retail installment sale contract with Creditor to finance the purchase of the Vehicle, which occurred within the 910-day period preceding the date of the filing of the petition. The creditor has filed a timely proof of claim stating the total amount of its secured claim is $14,414.59. The plan does not provide for the repayment of this loan in full through the plan. 11 U.S.C. § 1325(a)(5)(B)(ii).

The plan filed April 15, 2016, 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.

2. 16-20707-B-13 EDWIN GATO
MJ-1 Pauldeep Bains

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-9-16 [35]

NATIONSTAR MORTGAGE, LLC VS.

Tentative Ruling: The Motion for Relief From 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). The Debtor has filed a response.

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

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8603 Rollingbay Drive, Bakersfield, California (the "Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that Movant holds a promissory note date July 21, 2013, secured by a deed of trust of the same date as signed by original borrowers Angel Canez, Jr. and Eva Canez. The Declaration further states that Eva Canez transferred her interest by grant deed to Edwin Gato ("Debtor") without the knowledge or consent of Movant in violation of the terns under the deed of trust executed by the original borrowers.

Debtor has filed a response stating that he is not familiar with the Property and asserts that he has no ownership interest in the Property whatsoever. Debtor further asserts that he does not know an Angel Canez, Jr. nor a Eva Canez. Debtor states that he does not oppose the granting of the motion for relief from the automatic stay as to the Property.

Given that the Debtor has no interest in the property and it is not necessary for an effective reorganization, the motion for relief from the automatic stay is granted as to the Property.

The court shall enter an appropriate order confirming.

3. 16-22507-B-13 MARK/CAROL RHYNE — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Peter G. Macaluso — 5-25-16 [19]
Thru #4

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 sustain the objection and confirm the plan.

Although feasibility depends on the granting of a motion to value collateral for HSBC/Beneficial, which is granted at Item #4, and the filing of amendments to Forms 12CC-1, 12C-2, and Schedules in order to resolve inaccuracies, the Debtors have not provided the Chapter 13 Trustee with copies of utility bills showing proof of high utility expenses as requested by the Trustee at the meeting of creditors held May 19, 2016. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed April 20, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

4. 16-22507-B-13 MARK/CAROL RHYNE — MOTION TO VALUE COLLATERAL OF HSBC/BENEFICIAL FINANCIAL I, INC.
PGM-1 Peter G. Macaluso — 5-24-16 [14]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

The Motion to Value Collateral of HSBC/Beneficial Financial I, Inc. 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 HSBC/Beneficial Financial I, Inc. at $0.00.

The motion to value filed by Debtors to value the secured claim of HSBC/Beneficial Financial I, Inc. ("Creditor") is accompanied by the Debtors' declaration. Debtor is the owner of the subject real property commonly known as 4936 Earlcort Circle, Sacramento, California ("Property"). Debtors seek to value the Property at a fair

market value of $175,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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 first deed of trust secures a claim with a balance of approximately $194,024.24. Creditor's second deed of trust secures a claim with a balance of approximately $132,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

5.	16-22412-B-13 JPJ-1	DANIEL/EVE DINEEN Ted A. Greene	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-25-16 [15]

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 June 13, 2016. The confirmation hearing for the amended plan is scheduled for August 2, 2016. The earlier plan filed April 15, 2016, is not confirmed.

The court will enter an appropriate minute order.

6.	15-27913-B-13 JPJ-1	TRACI HUFFSMITH Rick Morin	OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 4-18-16 [17]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

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

The court's decision is to sustain the objection.

Bank of America, N.A. ("Creditor") is the holder of the first deed of trust on the Debtor's residence and is provided for in the plan filed October 9, 2015, and confirmed on November 3, 2015, in Class 4 with the Debtor making monthly contract installments directly to the Creditor. Creditor seeks $900.00 in post-petition charges, which is composed of $350.00 in fees for "Bk Atty Plan Rvw" on October 20, 2015, and $550.00 for what appears to be the review of an untimely proof of claim on February 12, 19, and 22, 2016, which is after the February 3, 2016, deadline for filing a proof of claim for non-governmental units.

The court finds that the Creditor has failed to explain the time spent by its counsel to review the plan and proof of claim, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Chapter 13 Trustee's objection is sustained and the fees are disallowed.

The court will enter an appropriate minute order.

7. 16-20613-B-13 URAL THOMAS MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 4-25-16 [40]
Thru #8

Tentative Ruling: The Motion to Confirm First Amended Plan Dated April 25, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition has been filed by Wells Fargo Dealer Services and the Chapter 13 Trustee.

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

First, feasibility of the plan depends on the granting of a motion to value collateral of Wells Fargo Dealer Services for a 2012 Chevy Camaro pursuant to Local Bankr. R. 3015-1(j). The Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral.

Second, the Debtor has not signed the plan and therefore it cannot be determined if the plan was filed in good faith.

Third, the Debtor has not amended the Statement of Financial Affairs to list property transferred to Debtor's ex-spouse. This request was made by the Trustee at the meeting of creditors and in the objection to confirmation of plan heard and sustained on April 12, 2016. To date, the Debtor has not taken any action to amend the document.

Fourth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's disposable income is not being applied to make payments to unsecured creditors. Based on Debtor's disposable income, the Debtor must pay no less than $501,234.60 to general unsecured creditors but the plan will pay only $1,551.91 to Class 7 general unsecured creditors.

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.

8. 16-20613-B-13 URAL THOMAS COUNTER MOTION TO DISMISS CASE
LBG-1 Lucas B. Garcia 6-6-16 [64]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor 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.

The court will enter an appropriate minute order.

9. 13-21414-B-13 ELLAMAE LOFTON
RJ-3 Richard L. Jare

MOTION TO AVOID LIEN OF WACHOVIA DEALER SERVICES, INC.
6-7-16 [49]

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 is a request for an order avoiding the judicial lien of Wachovia Dealer Services, Inc. ("Creditor") against the Debtor's property commonly known as 516 Phoenix Circle, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,224.24. An abstract of judgment was recorded with Solano County on September 9, 2008, which encumbers the Property. Debtor states that this gave rise to Claim No. 2-1 in the amount of $13,166.83 filed by Wells Fargo Bank, dba Wells Fargo Dealer Services. All other liens recorded against the Property total $248,734.49.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $162,038.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 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).

The court will enter an appropriate minute order.

10. 16-21514-B-13 CHERRONE PETERSON
JPJ-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-10-16 [21]

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

The court's decision is to overrule the objection.

The Trustee objects to the Debtor's use of the unknown exemption ES1 #1757 for SMUD Utility Deposits on Schedule C filed March 11, 2016. The Debtor has filed a response stating that it filed an amended Schedule C on May 24, 2016. The amended Schedule C now states that the SMUD Utility Deposits are exempt under § 703.140(b)(5). The Trustee's objection is overruled.

The court will enter an appropriate minute order.

11. 16-21715-B-13 TILLA SIORDIA MOTION TO CONFIRM PLAN
EAS-1 Edward A. Smith 5-10-16 [17]
Thru #12

Tentative Ruling: The Motion to Confirm First Amended Plan Dated May 10, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,375.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the amended plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home Mortgage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

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.

12. 16-21715-B-13 TILLA SIORDIA COUNTER MOTION TO DISMISS CASE
EAS-1 Edward A. Smith 6-8-16 [25]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor 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.

The court will enter an appropriate minute order.

13. 16-22119-B-13 JAMES/HELEN BALDWIN
JPJ-1 Mark A. Wolff

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND MOTION TO DISMISS CASE
5-12-16 [23]

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

This matter was continued from June 21, 2016, to allow the Debtors to resolve issues raised by the Chapter 13 Trustee. A review of the court's docket shows that the Debtors have not filed a motion to value collateral of Bank of America and have not filed any declarations addressing the Trustee's objections. As such, the court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, feasibility depends on the granting of a motion to value collateral of Bank of America for a second deed of trust on the Debtors' residence. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Second, the Debtors' projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). The Debtors are making voluntary retirement contributions at Line 41 of the Means Test in the amount of $1,371.00. These payments are disposable income under 11 U.S.C. § 547(b)(7) and therefore such income must be applied to make payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012).

Third, the Debtors have not rebutted the presumption as to the amount they are required to pay to unsecured creditors under the Means Test. The Debtors' Amended Means Test lists cigarette expenses in the amount of $450.00 and horse expenses in the amount of $400.00 on Line 45. As a result, Line 45 of the Means Test shows that the Debtors' monthly disposable income is $746.17 and that the Debtors pay no less than $44,770.20 to general unsecured creditors. The Trustee calculates that the Debtors' correct monthly disposable income is or should be $2,967.17 and that the Debtors should pay no less than $178,030.20 to general unsecured creditors. The Debtors have presented no evidence of a significant change in expenses and have not shown that the expense figures used in lieu of those on the Means Test for calculating disposable income are known and virtually certain at the time of confirmation.

The Debtors do not appear to appreciate the significance of seeking the extraordinary relief the Bankruptcy Code provides. The Bankruptcy Code provides debtors protection from the pressure of creditors and to ultimately discharge their debts, but it also requires debtors to modify their lifestyle for a limited period of time. A debtor may be able to eliminate their unsecured debts by making a small percentage payment to general unsecured creditors, but the amount that must be paid is based upon reasonable expenses, not expenses to maintain a pre-bankruptcy lifestyle. The expenses for cigarettes and horses are not reasonable expenses.

The plan filed April 4, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

14. 15-25920-B-13 KATHIE EIDSON
JPJ-1 Richard L. Jare

OBJECTION TO CLAIM OF ABILITY RECOVERY SERVICES, LLC, CLAIM NUMBER 2
4-21-16 [21]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Ability Recovery Services, LLC 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 Ability Recovery Services, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Ability Recovery Services, LLC ("Creditor"), Claim No. 2-1. The claim is asserted to be in the amount of $1,953.36 and that the basis for the claim is "Credit Card." Objector states that the claim should be disallowed because a claim based on an open-ended or revolving consumer credit agreement must be filed with a statement including the following information: the name of the entity from whom the creditor purchased the account, the name of the entity from whom the debt was owed at the time of an account holder's last transaction on the account, the date of an account holder's last transaction, the date of the last payment on the account, and the date on which the account was charged to profit and loss. Fed. R. Bankr. P. 3001(c)(3)(A).

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim did not include any of the required information pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

15. 15-26820-B-13 KELLY JORDAN
MS-1 Mark Shmorgon

MOTION TO APPROVE LOAN MODIFICATION
5-13-16 [19]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

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

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will increase the Debtor's mortgage payment from the current $1,131.02 a month to $1,157.28 a month. Although this is an increase in her mortgage payment, the Debtor has filed a declaration stating that the increase by $26.26 is a de minimis amount, that she has been current on her plan payments, and that she can fulfill her obligations as a debtor. Moreover, the mortgage payment will decrease for months 2-11 and again for the remaining 243 months of the plan.

The motion is supported by the Declaration of Kelly Jordan. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

16. 12-36021-B-13 ERNEST VALENTINE AND DIANE JOHNSON-VALENTINE
PGM-3 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
5-23-16 [78]

Tentative Ruling: The Application for 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition has been filed by the Trustee and a response has been filed by the Debtors.

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

Before the court will consider the motion for additional compensation, counsel must first show cause why he should be relieved from the terms of a Substitution of Attorney for Debtor(s) filed on August 7, 2015.[1] Paragraphs 3 and 4 of that Substitution state as follows:

> 3. Peter Macaluso has agreed to take the cases subject to the existing financial arrangement with the Trustee and Hughes Financial Law.
>
> 4. The substitution shall not increase the cost to the Client nor prejudice their case.

In the absence of any explanation why counsel should now be permitted to increase the cost of this case to the client, or how the cost to the client will not increase by the request for additional attorney's fees, the motion for compensation is denied without prejudice.

[1] This issue is likely to repeat as this is one of the hundreds of cases counsel acquired from Hughes Financial Law. The court approved this Substitution and one filed on November 18, 2015, in an order entered on November 20, 2015.

17. 16-21821-B-13 LAUREN CHERWIN
JPJ-1 Edward A. Smith

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-16 [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.

This matter was continued from June 21, 2016, to allow the Debtor to resolve issues raised by the Chapter 13 Trustee. A review of the court's docket shows that the Debtor has not filed any declarations addressing the Trustee's objections. As such, the court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Means Test shows that the Debtor's monthly disposable income is $1,189.82 and the Debtor must pay no less than $71,389.20 to general unsecured creditors. The Trustee calculates that the plan only proposes to pay $7,213.79 or approximately 5% to Class 7 general unsecured creditors.

The plan filed March 23, 2016, 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.

The court will enter an appropriate minute order.

18. 16-23333-B-13 ALFONSO/CAMMIE MACIEL MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 6-7-16 [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 deny the motion to extend automatic stay.

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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtors prior bankruptcy case was dismissed on May 10, 2016, after Debtors failed to obtain confirmation of an amended plan within 75 days of the entry of an order denying confirmation of a plan (case no. 15-29487, Dkt. 31). 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 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 state that this bankruptcy case was filed in order to retain their vehicles and satisfy tax debt. Debtors further state in their declaration that their circumstances have changed in that Joint Debtor now has full-time work, which will presumably ensure that they will be able to fund proposed plan payments. However, the previous case was not dismissed due to failure to make plan payments. The case was dismissed because the Debtors failed to file a new plan within 75 days of the court's entry of an order denying confirmation of a plan. The Debtors provide no explanation as to why they failed to file a new plan within the 75-day deadline.

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 denied and the automatic stay is not extended.

The court will enter an appropriate minute order.

19.	11-44241-B-13 SLH-4	RAJINDER SINGH AND KULJEET KAUR Seth L. Hanson	OBJECTION TO CLAIM OF VAN DE POL ENTERPRISES, INC., CLAIM NUMBER 1 4-26-16 [77]

Tentative Ruling: The Debtors' Objection to Claim No. 1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain in part the objection to Claim No. 1 of Van de Pol Enterprises, Inc.

Debtors Rajinder Singh and Kuljeet Kaur ("Objectors") request that the court disallow the claim of Van de Pol Enterprises, Inc. ("Creditor"), Claim No. 1. The claim is asserted to be secured in the amount of $125,423.10 by the Creditor. Objector, on the other hand, asserts that the secured claim is in the amount of $33,000.00 and that the balance is unsecured since the Creditor stipulated to these terms in a response filed January 3, 2012.

The Chapter 13 Trustee has filed a response stating that is has already distributed $34,708.08 to the Creditor. This is $1,708.08 more than the amount of the secured claim as requested in the Debtors' objection. The Trustee requests that the Debtors' objection be granted on the condition that the order state the following: "the claim of Van de Pol Enterprises, Inc. (Court Claim No. 1) be allowed as a secured claim in the amount of $34,708.08 and that the remaining balance of the claim be treated as a general unsecured claim."

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

Given that the Trustee has already paid $1,708 more than the secured claim requested, the court finds that the proof of claim of Van de Pol Enterprises, Inc. shall be allowed as a secured claim in the amount of $34,708.08. The balance shall be treated as a general unsecured claim. Objectors have satisfied their burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is allowed as secured in the amount of $34,708.08 and the remainder shall be deemed an unsecured claim. This language shall be provided in the order confirming.

The court will enter an appropriate minute order.

20.	13-25543-B-13 PGM-2	JAMES/PATRICIA FRANKLIN Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 5-24-16 [54]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

The Application for 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)(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 the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since January 5, 2016, after substituting into this case from Scott A. Coben. Scott A. Coben consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 16. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $1,500.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 54.

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 have to file a subsequent motion to modify. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of $1,500.00 instead of $1,830.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees $1,500.00
Additional Costs and Expenses $ 0.00

The court will enter an appropriate minute order.

21. 15-29045-B-13 GURDEV BOPARAI MOTION TO CONFIRM PLAN
Thru #22 David Ndudim 5-4-16 [54]

Tentative Ruling: The Motion to Confirm Debtor's 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 not confirm the first amended plan.

First, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses requested by the Trustee at the meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the Debtor has not provided the Trustee with documents pertaining to the Debtor's income from employment and from a business as requested by the Trustee. These documents include copies of bank statements and copies of Profit and Loss Statements. Feasibility cannot be determined pursuant to 11 U.S.C. §§ 1325(a)(3)(4) or (6) and § 1325(b)(1)(B).

Third, the Debtor has not properly amended the Statement of Financial affairs to list his current business called Be Bright Trucking and to disclose details of the sale of a dry cleaning business. It cannot be assessed whether the plan complies with 11 U.S.C. § 1325(a)(4).

Fourth, the Debtor has not properly amended Schedule B to list the amount of his interest in a 2006 Toyota Sienna and to provide identifying information regarding the vehicle. It cannot be assessed whether the plan complies with 11 U.S.C. § 1325(a)(4) until the Schedule has been amended.

Fifth, the Debtor has not amended Schedule D to account for the secured debts against his residence and a truck. It cannot be assessed whether the plan complies with 11 U.S.C. §§ 1325(a)(4) or (6) without further information regarding these secured debts.

Sixth, the Debtor has not filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Additionally, the plan does not specify a selection as to whether Debtor's counsel will seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a separate motion pursuant to 11 U.S.C. §§ 3329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Seventh, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a chapter 7 proceeding. The total value of nonexempt property in the estate is $178,074.25 and the plan does not propose to pay anything to unsecured creditors.

Eighth, the plan does not appear to have been proposed in good faith pursuant to 11 U.S.C. § 1235(a)(3) since the Debtor has failed to address the above concerns in the amended plan and has failed to provide the Trustee with requested documents and amendments to properly account for the Debtor's income and assets.

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.

22. 15-29045-B-13 GURDEV BOPARAI
JPJ-2 David Ndudim

CONTINUED MOTION TO RECONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
5-4-16 [50]

Tentative Ruling: The Trustee's Motion to Re-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)(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 re-convert this Chapter 13 case to a Chapter 7.

This motion filed by Chapter 13 Trustee Jan P. Johnson ("Movant") was heard on June 7, 2016, and continued to June 21, 2016. Movant asserts that the case should be converted based on the ground that the Debtor has failed to take further action to confirm a plan in this case and there is non-exempt equity of $178,074.25 in the estate.

The Debtor has filed a response stating that is has taken action to prosecute this case by filing an amended plan that is scheduled for a confirmation hearing on June 21, 2016, 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).

Although the Debtor did file an amended plan on May 4, 2016, cause does exist to convert this case pursuant to 11 U.S.C.§ 1307(c) because the Debtor's amended plan is nearly identical to that filed on February 18, 2016. Additionally, the Debtor has failed to address the concerns at Item #21 and has failed to provide the Trustee with requested documents and amendments to properly account for the Debtor's income and assets. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

23. 16-22254-B-13 ROSE RODRIGUEZ
Thru #25 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
5-24-16 [33]

Tentative Ruling: The Bank of America, N.A.'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 overrule the objection but deny confirmation of the plan for reasons stated at Item #25.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $207,294.45 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed April 11, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #25 and is not confirmed.

The court will enter an appropriate minute order.

24. 16-22254-B-13 ROSE RODRIGUEZ
CJO-1 Richard L. Jare

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
6-6-16 [39]

BANK OF AMERICA, N.A. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Automatic Stay (Real Property) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

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

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2519 Woodgate Way, Roseville, California (the "Property"). Movant has provided the Declaration of Peter Murphy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Murphy Declaration states that the last payment received by the Debtor was in June 16, 2011, and that there is 1 post-petition default, with a total of $2,852.20 in post-petition payments past due. Additionally, Movant's Relief from Stay Summary Sheet states that there are 69 pre-petition payments in default, with a total of $207,294.45 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the

total debt secured by this Property is determined to be $570,665.02 (including $396,148.53 secured by Movant's deed of trust) as stated in the Murphy Declaration and Schedule D filed by Debtor. The value of the Property is determined to be $480,000.00 as stated in Schedules A and D filed by Debtor.

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, 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.

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.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

25.	16-22254-B-13 JPJ-1	ROSE RODRIGUEZ Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-25-16 [36]

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.

The claim of Bank of America is mis-classified as a Class 1 claim. Th pre-written language of the form plan at Section 2.86(c) states "[o]ther than to cure any arrearage, this plan does not modify Class 1 claims." According to the Additional Provisions, the creditor will not receive ongoing monthly contractual payments but will receive an "adequate protection" payment of $2,650.00 per month pending the approval of a loan modification. The claim is not a Class 1 claim in substance since it is not a claim that will receive ongoing monthly contractual payments in accordance with 11 U.S.C. § 1322(b)(5). Since the Additional Provisions specifically state that the creditor will receive adequate protection payments instead of the ongoing monthly

contractual payments, the plan impermissibly modifies the claim. 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). This court does not allow such modifications.

The plan filed April 11, 2016, 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.

The court will enter an appropriate minute order.

26. 16-23654-B-13 JOANN GOWANS MOTION TO EXTEND AUTOMATIC STAY
SS-1 Scott D. Shumaker 6-7-16 [10]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 21, 2016, after Debtor failed to make plan payments (case no. 3/21/16, Dkt. 93). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that this case was filed in order to prevent foreclosure of her residence. Debtor further states that if the stay is not extended, she runs the risk of foreclosure proceedings commencing against her home and that her vehicle will be repossessed. The Debtor asserts that she will be able to fund plan payments since she now has an income of $3,510.00 per month from rooms rented out and that this will be able to pay the mortgage after modification, which she is actively in the process of seeking.

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

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

The court will enter an appropriate minute order.

27. 16-22557-B-13 JAMES/PATRICIA FARRELL
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-25-16 [15]

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). 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 failed to appear at the duly noticed first meeting of creditors set for May 19, 2016, as required pursuant to 11 U.S.C. § 343. The Debtors did appear at the continued meeting of creditors on June 16, 2016. Nonetheless, the Trustee has not filed a withdrawal of its objection. Assuming, however, that the objection is withdrawn since the objection is based on the Debtors' failure to appear at the § 341 meeting, in the absence of any other objection this plan can be confirmed.

The court will enter an appropriate minute order.

28. 16-22265-B-13 JUAN ACOSTA
JHW-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY FIRST INVESTORS SERVICING CORPORATION
4-28-16 [16]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

The court having approved the stipulation entered between First Investors Servicing Corporation and the Debtor on June 9, 2016, the objection is deemed resolved. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed April 11, 2016, will be confirmed.

The court will enter an appropriate minute order.

29. 16-21768-B-13 COLETTE MONTGOMERY
APN-1 George T. Burke
Thru #30

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
5-24-16 [34]

Tentative Ruling: This matter was continued from June 7, 2016. Secured Creditor, Wells Fargo Bank, N.A. DBA Wells Fargo Dealer Services'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 overrule the objection and confirm the plan.

Feasibility depends on the granting of a motion to value collateral for WFS Wachovia Dealer Services for a 2012 Hyundai Elantra. The Debtor and Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, entered into a stipulation valuing the 2012 Hyundai Elantra ("Vehicle") at $7,300.00. The plan shall be confirmed provided that the Debtor incorporate in the order confirming the terms of the stipulation.

The plan filed March 23, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

30. 16-21768-B-13 COLETTE MONTGOMERY
GTB-1 George T. Burke

CONTINUED MOTION TO VALUE COLLATERAL OF WACHOVIA DEALER SRVS
5-4-16 [15]

Tentative Ruling: This matter was continued from June 7, 2016. The Motion to Value Collateral 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)(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 to the motion to value was filed.

The court's decision is to dismiss the matter as moot. The Debtor and Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, entered into a stipulation valuing the 2012 Hyundai Elantra ("Vehicle") at $7,300.00, which represents the replacement value to Debtor. The court approved the stipulation on June 17, 2016.

The court will enter an appropriate minute order.

31.	15-24771-B-13 GW-1	CARLOS MAXIMO, JR. AND ELIZABETH MAXIMO Gerald L. White	MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS' ATTORNEY 5-19-16 [54]

DEBTOR DISMISSED:
05/05/2016
JOINT DEBTOR DISMISSED:
05/05/2016

Final Ruling: No appearance at the June 21, 2016, hearing is required.

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

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

The motion for compensation will be denied without prejudice for two reasons: (1) counsel has failed to satisfy his burden of demonstrating that the attorney's fees requested are reasonable; and (2) counsel's Retainer Agreement appears to violate LBR 2017-1(a).

Reasonableness

Counsel bears the burden of demonstrating that the requested attorney's fees and costs are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Counsel has not met that burden.

An overwhelming number of counsel's time entries are "lumped." Lumping, or block billing, is a timekeeping practice whereby multiple services are included in a single, aggregated time entry without any breakdown of the time spent on each activity. *See In re Duta*, 175 B.R. 41, 46-47 (9th Cir. BAP 1994). Lumping prevents the court from conducting a reasonableness analysis. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Lumping is universally disapproved by bankruptcy courts. *In re Recycling Indus., Inc.*, 243 B.R. 396, 406 (Bankr. D. Colo. 2000).

The following time entries on Exhibits 1, 2, and 3 to Dkt. 58 are lumped:

05/04/15; 05/06/15; 05/08/15; 05/29/2015; 06/03/2015;
06/08/2015; 06/08/2015; 06/10/2015; 06/12/2015;
06/17/2015; 07/06/2015; 07/23/2015; 07/23/2015;
07/28/2015; 07/31/2015; 08/13/2015; 08/14/2015;
08/19/2015; 08/19/2015; 09/22/2015; 10/09/2015;
11/06/2015; 01/06/2016; 01/18/2016; 02/02/2016;
02/09/2016; 03/30/2016; 04/22/2016; 04/23/2016.

Each of these entries include multiple, and in most cases unrelated, tasks on a single day with a single time entry for all tasks performed on the particular date. There is no separate time entry attributed to each individual task, and all tasks are billed under one general entry. As a result, the court is unable to conduct any sort of reasonableness analysis with respect to the individual tasks or total time spent in relation to the fees requested.

Instead of denying the motion altogether or significantly reducing lumped hours, the court will provide counsel with an opportunity to "unlump" time entries and re-file the motion for compensation.

The court also notes that counsel's Retainer Agreement, submitted as Exhibit 1 to Dkt. 58, appears to violate LBR 2017-1(a)(1) which states as follows:

> (1) An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, **motions for relief from the automatic stay**, **motions to avoid liens**, **objections to claims**, and reaffirmation agreements. However, an appearance in the bankruptcy case for a party does not require the attorney to appear for that party in an adversary proceeding.

(Emphasis added).

Here, counsel's Retainer Agreement distinguishes between "basic services" and "additional services." Included in the latter - and thus excluded from the former - are services counsel is required to provide in the course of representing debtors in cases filed in this court. These include: Add'l. Serv. #4-"[o]bjections to creditors' claims, ... regardless of whether a formal objection is filed;", Add'l. Serv. #6-"[m]otions for relief from the automatic stay[;]", and Add'l. Serv. #7-"[m]otions to avoid household goods and judgment liens[.]" Any re-filed motion shall explain this distinction and how, by excluding services required by LBR 2017-1(a)(1) from "basic services" and including those services as "additional services," the Retainer Agreement complies with the local rule.

Based on the foregoing, the motion for compensation is denied without prejudice.

32. 14-22173-B-13 YOLANDA SWARTOUT MOTION TO RECONSIDER DISMISSAL
NBC-4 Eamonn Foster OF CASE
5-17-16 [89]

DEBTOR DISMISSED: 05/13/2016

Final Ruling: No appearance at the June 21, 2016, hearing is required.

Before the court is the Debtor's Motion for Reconsideration filed by Yolanda Christine Swartout ("Debtor"). The motion was filed on May 17, 2016. It was amended on June 10, 2016. The Debtor - through her attorney Eamonn Foster - asks the court to reconsider and vacate its order dismissing this chapter 13 case entered on May 13, 2016.

For the reasons explained below, the dismissal order will not be vacated and the motion for reconsideration will be denied with prejudice.

Background

This matter arises out of a Notice of Default and Application to Dismiss that the Chapter 13 Trustee filed on February 26, 2016. The notice states that the Debtor is delinquent in payments due under her confirmed chapter 13 plan and provides the Debtor with several options to cure the delinquency.

The Debtor - through Mr. Foster - responded to the Trustee's notice of default on March 2, 2016. The response states the Debtor is not in default, identifies an accounting issue that makes it appear as if the Debtor is in default monthly, attributes that accounting issue to the Trustee, and asks the court to compel the Trustee to adopt and implement the Debtor's interpretation of the plan to resolve the accounting and default issue.

The Trustee's notice of default and the Debtor's response were heard on April 12, 2016. Although at that time the Debtor was current, both the Trustee and the Debtor acknowledged that the accounting and default issue that triggered the notice of default would recur monthly throughout the term of the plan if not resolved. The following exchange occurred at that hearing:

> MS. KOO: I don't know, maybe Mr. Foster can start on this one, because at this point I'm not sure that there's still a real controversy. They did object to the Notice of Default, but the Notice of Default was then cured before it expired. So there really was -- when all is said and done, there is no controversy, because the debtor cured the Notice of Default.
>
> However, Mr. Foster still might want to contact us in regards to the plan payments, because I still think that between his office and my office, we're still kind of differing on when we believe the plan payments should have started and not -- is potentially going to be a concern every month unless that's resolved.
>
> MR. FOSTER: Right. Your Honor, if I may --
>
> THE COURT: Sure.
>
> MR. FOSTER: -- as -- as I state in the response to the Application to Dismiss, every -- every month, my client receives a notice from the Trustee's Office saying that she's delinquent because of this accounting issue. My client has made a payment every month -- now, the two months that she was delinquent for this were because she sent in personal checks, but she still mailed them in. And then she sent in the cashier's checks as necessary. But she's made her

payment every month.

But the Trustee has been accounting for the payment made in October of 2014 that was made on October 8th of 2014 as essentially, I think, an extra payment, a superfluous payment, because every month since October 2014, the Trustee has been sending my client a notice you're delinquent. And then she makes her payment. And then the next month she's delinquent again. And it's just every single month it seems like the Trustee's accounting is showing that she is behind one payment because she made a payment on October 8th, 2014, seven days before I filed a motion to confirm an amended plan.

And so the Trustee, I think, is saying, well, she made a payment October 8th, 2014, and then another payment was due by October 25th, 2014. And since she hasn't made that extra payment, she's always one month behind.

[Hr'g Tr. April 12, 2016, at 3:10-4:20].

To resolve future uncertainty over plan payments, fix the accounting issue, and eliminate monthly default notices the court ordered the Debtor to file a modified plan by April 22, 2016. The court also continued the April 12, 2016, hearing to May 10, 2016, for the purpose of considering confirmation of a modified plan on shortened notice. On April 12, 2016, the following exchange between the court and Mr. Foster took place:

THE COURT: Well, look here, I'm not modifying a plan without a motion to modify the plan, and I'm not going to force the Trustee to change the terms of a plan without a proper motion. If you --

MR. FOSTER: I'm not asking for a modification.

THE COURT: Well --

MR. FOSTER: I'm just asking for the Court to interpret the plan because the plan doesn't require --

THE COURT: And once -

MR. FOSTER: -- a payment on -

THE COURT: -- I interpret it --

MR. FOSTER: -- this one.

THE COURT: -- once I interpret it, that's a modification of what the plan's written, because I'm picking one version over the other.

Look, if you want to file a motion to modify, I'll shorten the time, and I'll hear it, and perhaps, if you can discuss it with the Trustee, there would be no action --

MR. FOSTER: See, I don't want it to be modified. I think it's fine.

THE COURT: Well, I think apparently the language needs to be cleared up.

> MR. FOSTER: All right. All right. That's fine.
>
> THE COURT: I will hear it on shortened time if you want to file the motion. But, in fact, if you want to file one, we'll set a hearing date right now.
>
> MR. FOSTER: Yeah, I can -- I can get something -- I'm actually going to be out of the office for the next week, but I can get something filed by the -- let me pull up my calendar. I can get something on the file by the 22nd of April. And then if we could hear it -- when would be a good time in early May, I guess, or –

[Tr. Hr'g April 12, 2016, at 7:5-8:11].

Following the hearing on April 12, 2016, the court entered civil minutes of the same date. The civil minutes included an order for the debtor to file a modified plan by April 22, 2016. The court's civil minutes state as follows:

> MATTER CONTINUED TO 5/10/16 AT 1:00 P.M. MODIFIED PLAN SHALL BE FILED BY 4/22/16 AND ANY RESPONSE BY TRUSTEE SHALL BE FILED BY 5/03/16.

[Dkt. 75]

Mr. Foster ignored the civil minutes. He did not file a modified plan by April 22, 2016. Instead, on April 20, 2016, he filed a motion to compel in which he once again asked the court to order the Trustee to accept his interpretation of the Debtor's confirmed plan and declare the Debtor's plan payments perpetually current. The relief requested in the motion to compel was identical to the relief Mr. Foster previously requested in response to the Trustee's notice of default of February 26, 2016. It was also the same relief the court stated on April 12, 2016, it would not grant without a modified plan. And it was the same relief the court ordered Mr. Foster in the civil minutes of April 12, 2016, to resolve with a modified plan.

Based on Mr. Foster's disregard of the court's order to file a modified plan, on May 10, 2016, the court ordered this case dismissed pursuant to Federal Rule of Civil Procedure 41(b) made applicable by Federal Rules of Bankruptcy Procedure 7041 and 9014. The order dismissing this case was entered on May 13, 2016. The reconsideration motion was filed on May 17, 2016.

Mr. Foster makes three arguments in support of his request for reconsideration. First, he maintains that he is free to disregard this court's (and presumably all other courts') orders if he does not agree with what the court orders. Second, he asserts the court was without subject matter jurisdiction to continue the April 12, 2016, hearing to May 10, 2016, and on May 10, 2016, order the case dismissed. And third, he complains that the court failed to adequately explain its reasons for dismissal. Mr. Foster's arguments lack merit.

Discussion

When, as here, a motion for reconsideration is filed within fourteen days of the entry of the underlying order, the motion is decided under Federal Rule of Civil Procedure 59(e) made applicable by Federal Rules of Bankruptcy Procedure 9023 and 9014. *See Dicker v. Dye (In re Edelman)*, 237 B.R. 146, 151 (9th Cir. BAP 1999). Relief under Rules 59(e)/9023 is an extraordinary remedy which is used sparingly. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). In fact, such a motion may only be granted on one of four grounds: (1) if necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if necessary to present newly discovered or previously unavailable evidence; (3) if necessary to prevent manifest injustice; or (4) if an amendment is justified by an intervening change in controlling law. *Id.*

Numbers 2 and 4 are inapplicable. Mr. Foster identifies no newly discovered or otherwise previously unavailable evidence or any change in controlling law. As to

number 3, Mr. Foster has failed to establish manifest injustice. And as to number 1, Mr. Foster has not identified any manifest error of law or fact.

No Manifest Injustice

"[M]anifest injustice does not exist where . . . a party could have easily avoided the outcome[.]" *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 673 (D.C. Cir. 2004)(internal quotation marks and brackets omitted). Here, Mr. Foster could have easily avoided dismissal of his client's chapter 13 case by filing a modified plan. He chose otherwise and, instead, filed the motion to compel.

In an attempt to justify his disregard of the court's order to file a modified plan, Mr. Foster states that he never agreed to file a modified plan. In other words, Mr. Foster thinks that he needs to comply with a court order only if he agrees with it. Or put another way, Mr. Foster thinks he is free to disregard a court order if he disagrees with what the court orders. Not only is that argument frivolous, but it borders on the sanctionable. Mr. Foster's compliance with an order of this court (or any other court for that matter) is not conditioned upon his agreement with what the court orders and Mr. Foster is obligated to comply with all orders even if he disagrees with what is ordered.

The U.S. Supreme Court has made it abundantly clear that a party is not free to disobey a federal court order even if it dislikes, disputes, or disagrees with the order. In *Maness v. Meyers*, 419 U.S. 449 (1975), the Supreme Court stated: "If a person to whom a judge directs an order believes that the order is incorrect, the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." *Id.* at 458. The Ninth Circuit has also made abundantly clear that there are no circumstances - not even exceptional circumstances - that warrant disobedience with a federal court order even if the party or its attorney disagrees with or dislikes the order and even if the order is erroneous or improper. *Crystal Palace Gambling Hall, Inc. v. Mark Twain Indus. (In re Crystal Palace Gambling Hall, Inc.)*, 817 F.2d 1361 (9th Cir. 1986), the Ninth Circuit stated:

> If the appellants believed that the district court incorrectly issued an order, their remedy was to appeal and request a stay pending the appeal. Absent a stay, all orders and judgments of courts must be complied with promptly. Although both Crystal Palace and the shareholders appealed, no stay was obtained. A party cannot disobey a court order and later argue that there were 'exceptional circumstances' for doing so. This proposed 'good faith' exception to the requirement of obedience to a court order has no basis in law, and we reject the invitation to create such an exception. The appellants were not justified by exceptional circumstances in disobeying the court's order.

Id. at 1365 (internal citations, quotations, and quotation marks omitted).

The fact of the matter is that Mr. Foster chose to disregard and disobey the court's order to file a modified plan. If Mr. Foster was uncertain about what the court ordered, he could have asked for clarification. If he did not agree with the order to file a modified plan or even disliked it, he could have appealed or asked for reconsideration. In other words, Mr. Foster had a number of options available to him to address the court's order to file a modified plan. Those options did not include an option to disregard and disobey that order.

By his own decision to disregard and disobey the court's order to file a modified plan, Mr. Foster brought about the result he now asks the court to relieve him from, *i.e.*, dismissal of his client's chapter 13 case. That result was easily avoidable - all Mr. Foster had to do was file a modified plan. Having elected otherwise, the court concludes that reconsideration is not necessary to prevent manifest injustice.

No Manifest Error of Law or Fact

Mr. Foster next asserts the court lacked subject matter jurisdiction to continue the hearing on the Trustee's notice of default to May 10, 2016, because on April 12, 2016, the debtor was current on her plan payments and there no longer was any dispute. Put another way, in the absence of any pending controversy on April 12, 2016, Mr. Foster maintains the Trustee's notice of default was moot and the court's only option at that point was to deny it as such. The court disagrees.

Matters capable of repetition yet evading review are not moot. This exists when "the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again." *Fed. Elec. Com'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (internal citations, quotations, and footnote omitted); *see also San Luis & Delta-Mendota Water Auth. v. United States*, 672 F.3d 676, 703 (9th Cir. 2012).

Both the Trustee and Mr. Foster stated on April 12, 2016, that the accounting and default issue that triggered the Trustee's notice of default of February 26, 2016, will repeat each month throughout the term of the Debtor's plan. In fact, Mr. Foster explained that every month the Debtor receives a notice from the Trustee that she has defaulted on her plan payments and that default is cured when the Debtor makes the monthly plan payment. Thus, not only is the challenged action too short to be fully litigated prior to its cessation but, as Mr. Foster acknowledges, the Debtor will remain subject to repeated notices of default throughout the plan term.

Because of the foregoing cycle, the absence of a dispute on April 12, 2016, did not render the accounting, default, cure issue moot. That means the court was not without subject matter jurisdiction to (1) order Mr. Foster to file a modified plan on April 12, 2016, (2) continue the hearing on the Trustee's notice of default to May 10, 2016, to consider confirmation of a modified plan, and (3) dismiss this case on May 10, 2016, when Mr. Foster chose to not file a modified plan and instead filed the motion to compel.

Explanation of Factors Considered for Rule 41(b) Dismissal

Although the basis for the court's dismissal is explained in the civil minutes associated with the dismissal order entered on May 13, 2016, the court will take this opportunity to elaborate for Mr. Foster's benefit.

The court dismissed this chapter 13 case pursuant to Federal Rule of Civil Procedure 41(b) made applicable by Federal Rules of Bankruptcy Procedure 7041 and 9014. In relevant part, Rule 41(b) states as follows: "If the plaintiff fails. . . to comply with . . . a court order, a defendant may move to dismiss the action or any claim against it." Although Rule 41(b) provides for dismissal on a motion, the court can also dismiss an action sua sponte pursuant to Rule 41(b). *Hells Canyon Preservation v. U.S. Forest Service*, 403 F.3d 683, 689 (9th Cir. 2005); *Yourish v. Cal. Amplifier*, 191 F.3d 983, 987-88 (9th Cir. 1999).

The Ninth Circuit has set forth five factors for a court to consider before resorting to dismissal: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Yourish*, 191 F.3d at 990 (citation and quotation omitted). Dismissal is appropriate where at least four factors support dismissal, or where at least three factors strongly support dismissal. *Id.* (Citations, quotations, and internal quotation marks omitted).

In assessing the first factor, the public's interest in expeditious resolution of litigation will always favor a dismissal. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Yourish*, 191 F.3d at 990).

Relatedly, regarding the second factor, the court's need to manage its docket is served by dismissal. Given Mr. Foster's position that he need only comply with orders he agrees with, the court envisions multiple proceedings associated with orders entered in the case that Mr. Foster disagrees with. Take the present circumstances for example. The court ordered Mr. Foster to file a modified plan. Mr. Foster disregarded that order and, instead, took it upon himself to file (or re-file) the motion to compel. Thus, instead of considering one matter, *i.e.*, a modified plan, the court was forced to: (1) consider and evaluate dismissal under Rule 41(b); (2) prepare a written tentative ruling addressing dismissal under Rule 41(b); (3) consider and evaluate a motion for reconsideration of the dismissal order; (4) make a decision on the reconsideration motion; and (5) draft this decision. Thus, what could have been easily resolved with a single and likely unopposed hearing has now mushroomed into multiple matters and hearings.

As to the third factor, the court considers Mr. Foster's willful disregard of the order to file a modified plan prejudicial to the Trustee's administration of the case and payment to creditors. It is prejudicial because, as a result of Mr. Foster's disregard of the order to fix the accounting and default issue through a modified plan, that issue will now recur monthly. Each month that will require the Trustee to give this particular case greater attention than otherwise would be required because, as Mr. Foster stated, "every month, the [debtor] receives a notice from the Trustee's office saying that she's delinquent because of this accounting issue." [Tr. Hr'g April 12, 2016 3:25 - 4:2]. In other words, Mr. Foster's disregard of the court's order to file a modified plan puts the Trustee in the position of expending additional resources monthly to monitor this case, inform the Debtor of her default, and potentially file another notice of default.

Finally, as to the fourth factor, the court considered the availability of lesser sanctions (and by sanctions the court means alternatives) and concluded that no lesser sanction would be effective to obtain Mr. Foster's compliance with orders in general and, specifically, with the order to file a modified plan. Mr. Foster states that he never agreed to file a modified plan and, therefore, he need not and will not comply with the order to file a modified plan. Mr. Foster took that position on April 12, 2016, and he re-affirmed that position when he amended the reconsideration motion to include bolded quotations from the transcript of April 12, 2016, emphasizing that he did not agree to file a modified plan. In effect, Mr. Foster doubled-down on his position that he need only comply with an order with which he agrees (or, in other words, that he need not comply with orders he does not agree with). Under those circumstances, the court is convinced there is no other alterative available to it to persuade Mr. Foster to comply with the order to file a modified plan or any future orders entered in the case that Mr. Foster may happen to disagree with.

Conclusion

In short, the Debtor - through her attorney Mr. Foster - has failed to demonstrate manifest injustice or a error of law or fact. Therefore, for all the foregoing reasons it is ordered that the motion for reconsideration and to vacate the dismissal order of May 13, 2016, is denied with prejudice.

33. 16-21574-B-13 RODNEY/ANNA RATH MOTION TO RECONSIDER
BN-2 Mohammad M. Mokarram 5-31-16 [40]

Tentative Ruling: Before the court is a Motion for Reconsideration of Order Overruling Golden 1's Objection to Plan Confirmation filed by secured creditor Golden 1 Credit Union. The motion for reconsideration arises out of the court's order overruling Golden 1 Credit Union's objection to confirmation of the chapter 13 plan filed by debtors Rodney and Anna Rath on March 15, 2016. The order overruling that objection was entered on May 27, 2016. The reconsideration motion was filed on May 31, 2016.

For the reasons explained below, the motion for reconsideration will be denied with prejudice.

Discussion

Golden 1 is a secured creditor. Its claim is secured by a second deed of trust recorded against the Debtors' residence. The Debtors' personal liability on the loan from Golden 1 for which their residence is security was discharged in the Debtors' prior chapter 7 case. However, Golden 1 maintains that the Debtors' property remains liable for the entire loan balance under 11 U.S.C. § 1322(b)(2). Golden 1 asserts the loan balance is approximately $86,000.00.

The Debtors' now-confirmed chapter 13 plan provides for payment to Golden 1 as a Class 1 creditor. Golden 1 objected to confirmation of the plan based on its disagreement with the amount of its claim stated in the plan. Whereas the now-confirmed plan states the amount owed Golden 1 is $38,000.00, as noted above, Golden 1 asserts it is owed approximately $86,000.00.

Finding insufficient evidence to support the purported loan balance of $86,000.00, noting that Golden 1 remained free to file a proof of claim by the claims bar date, and there being no appearance by Golden 1's attorney at the confirmation hearing on May 24, 2016, the court overruled Golden 1's objection and ordered the Debtors' plan confirmed. The confirmation order was entered on May 27, 2016.

Golden 1 filed a motion for reconsideration on May 31, 2016. It makes two arguments in support of reconsideration. First, it argues that the failure of its attorney to appear at the confirmation hearing should be excused - and its objection to confirmation revived - under Federal Rule of Bankruptcy Procedure 60(b)(1) and/or (b)(6) made applicable by Federal Rules of Bankruptcy Procedure 9024 and 9014. Second, it maintains that it produced sufficient evidence to establish its claim amount at approximately $86,000.00 and, thus, allow the court to sustain its objection to the plan. The court is not persuaded by either argument.

Even if the court were to excuse counsel's failure to appear at the confirmation hearing and revive Golden 1's objection to confirmation under Rule 60(b)(1) or (6), the court would still overrule that objection on the basis Golden 1 has failed to carry its burden of proving it is owed in excess of $86,000.00.

Golden 1 bears the burden of proving that § 1322(b)(2) applies. *In re Santiago*, 404 B.R. 564, 570 (Bankr. S.D. Fla. 2009) (creditor asserting the protections of § 1322(b)(2) bears the burden of proof that its claim is entitled to protection from modification); *In re Moore*, 441 B.R. 732, 736 (Bankr. N.D.N.Y. 2010). Golden 1 has not satisfied that burden.

As the court noted on the record on June 7, 2016, when it heard and denied Golden 1's motion for relief from the automatic stay, the second deed of trust grants Golden 1 a security interest in personal property in addition to the Debtors' residence. Based on the grant of that additional security interest in personal property collateral it appears that Golden 1's loan may not be secured only by the Debtors' residence. That means its lien may not be protected by the anti-modification provisions of § 1322(b)(2), in which case it may be bifurcated. *See In re Lee*, 215 B.R. 22 (9th Cir. BAP 1997); *In re Adkins*, 2015 WL 9171888 (Bankr. E.D. Cal. December 14, 2015). And if the lien is subject to bifurcation that, in turn, affects the amount the Debtors

ultimately owe Golden 1 because the Debtors would owe Golden 1 only the difference between the value of the residence and the first deed of trust, whatever that yet-to-be determined amount may be.

In short, the court finds no error in its decision to overrule Golden 1's objection to confirmation because in its objection Golden 1 did not establish that it is owed the $86,000.00 it asserts it is owed. Golden 1 failed to establish that it is owed in excess of $86,000.00 because it has not satisfied its burden of demonstrating that the anti-modification provisions of § 1322(b)(2) are applicable to its claim. Therefore, Golden 1's motion for reconsideration is denied with prejudice.

34. 16-22377-B-13 PRISCILLA MCMANUS
JPJ-1 Mary D. Anderson
Thru #35

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-25-16 [30]

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 overrule the objection, deny the motion to dismiss, and confirm the plan.

First, feasibility depends on the granting of a motion to value collateral for River City Bank pursuant to Local Bankr. R. 3015-(1)(j). That matter is granted at Item #35.

Second, the Debtor has filed a detailed statement of gross receipt and ordinary and necessary expenses related to his income from the operation of a business. A business income and expenses sheet was filed on June 14, 2016.

Third, the Debtor has filed an amended Statement of Financial Affairs as requested by the Chapter 13 Trustee. The Debtor has cooperated with the Trustee and has complied with 11 U.S.C. § 521(a)(3).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed April 14, 2016, is confirmed.

The court will enter an appropriate minute order.

35. 16-22377-B-13 PRISCILLA MCMANUS
MDA-2 Mary D. Anderson

MOTION TO VALUE COLLATERAL OF RIVER CITY BANK
5-18-16 [25]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

The Motion to Value the Collateral of River City Bank 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 River City Bank at $0.00.

The motion to value filed by Debtor to value the secured claim of River City Bank("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1600 Starbuck Road, Rescue, California ("Property"). Debtor seeks to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $343,943.00. Creditor's second deed of trust secures a claim with a balance of approximately $81,351.71. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

36. 12-26182-B-13 EDWIN BRYDEN
JPJ-3 Michael David Croddy

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
4-28-16 [99]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

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

The court's decision is to sustain the objection.

A proof of claim was filed by U.S. Bank, c/o Ocwen Loan Servicing, LLC ("Creditor") on November 13, 2012, claim no. 15-1, on the court's claim register. The proof of claim shows that commercial property located at 6213 32nd Street, North Highlands, California, is held as collateral and that the amount of arrearages is $0.00. The Notice of Postpetition Fees, Expenses and Charges ("Notice") lists attorney's fees totaling $2,435.22. Since the loan was current when the petition was filed and there is no indication of any post-petition defaults, the fees are not reasonable.

The court finds that the Creditor has failed to explain the time spent by its counsel to review the motions for relief and notices of default (which the court notes have never been filed in this case based on the court's docket), has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested.

Additionally, documents attached to the Notice describe services for two "BK Loss Mitigation Cost" and one "Notice of Default" that were provided more than 180 days prior to the filing of the Notice. These fees must be disallowed pursuant to Fed. R. Bankr. P. 3002.1(c)(2).

The Creditor has failed to satisfy its burden of demonstrating that the $2,435.22 in fees requested, even if permitted, is reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Chapter 13 Trustee's objection is sustained and the fees are disallowed.

The court will enter an appropriate minute order.

37. 16-22290-B-13 JOSE PEREZ
EAT-1 Pro Se
Thru #38

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
5-25-16 [21]

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). No 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 #38.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $3,558.43 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed April 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #38 and the plan is not confirmed.

The court will enter an appropriate minute order.

38. 16-22290-B-13 JOSE PEREZ
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-25-16 [24]

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 duly noticed first meeting of creditors set for May 19, 2016, as required pursuant to 11 U.S.C. § 343. The Debtor must be thoroughly examined under oath.

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Third, 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).

Fourth, 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).

Fifth, 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).

Sixth, the plan payment in the amount of $200.00 does not equal the aggregate of the Trustee's fees and monthly post-petition contract installments due on Class 1 claims. The aggregate of the monthly amounts plus the Trustee's fee is $214.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Seventh, the plan does not state an amount to be paid to Wells Fargo Mortgage for the arrearage dividend.

Eighth, the plan does not specify a minimum dividend to Class 7 general unsecured creditors.

Ninth, the Debtor has claimed an interest in a vehicle, household furnishings, and clothes as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

The plan filed April 26, 2016, 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.

39. 11-29591-B-13 BRIAN SAECHAO
16-2030
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL
Thru #40

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-16-16 [1]

CONTINUED TO 7/05/16.

40. 11-29591-B-13 BRIAN SAECHAO
16-2030 TRF-1
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT
4-1-16 [7]

CONTINUED TO 7/05/16. COURT WRITTEN DECISION TO BE FILED BEFORE THE CONTINUED HEARING ON 7/05/16. CONTINUED HEARING WILL BE VACATED AND NO APPEARANCE ON 7/05/16 WILL BE REQUIRED.

41. 16-21593-B-13 SENAY FRANKLIN
JPJ-1 Pro Se
Thru #42

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-28-16 [16]

Tentative Ruling: This matter was continued from May 17, 2016, to allow the Debtor time to obtain the signature of her non-filing estranged spouse for the spousal waiver form. The Debtor was also permitted to file a declaration explaining her efforts to contact her estranged spouse if she was not able to obtain a signature from him. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally set 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 appeared at the May 17, 2016, hearing.

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

The Debtor has claimed an interest in a vehicle, household goods, clothing, cash on hand, bank accounts, pension, and rental deposit as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions that includes her non-filing spouse's signature. California Code of Civil Procedure § 703.140(a)(2). Therefore, the spousal waiver filed May 4, 2016, is not valid.

Moreover, a review of the court's docket shows that neither an amended spousal waiver form nor a declaration from the Debtor has been filed.

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

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.

The court will enter an appropriate minute order.

42. 16-21593-B-13 SENAY FRANKLIN
JPJ-2 Pro Se

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-28-16 [13]

Final Ruling: No appearance at the June 21, 2016, hearing is required.

This matter is continued from June 7, 2016, in order to be heard in conjunction with the continued objection to confirmation of plan at Item #41. 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 an amended spousal wavier with the signature of the Debtor's non-filing spouse has not been filed. Additionally, no declaration has been filed by the Debtor. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.