UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 3, 2017 at 1:00 p.m.

1.	17-22702-B-13 JPJ-1	CHRISTOPHER CANTERBURY AND REBECCA SCHINDLER Nikki Farris	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-15-17 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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.

First, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B) until Forms 122C-1 and C-2 are probably completed in their entirety. The Debtors' Form 122C-1 includes an improper expense at line 5 for ordinary and necessary business expenses of $14,432.17. A Chapter 13 debtor may not deduct business expenses from gross receipts to calculate current monthly income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008). Based on the gross receipts of $17,676.50, Debtors' annualized current monthly income $212,118.00 is greater than the applicable median family income of $84,059.00.

Second, feasibility of the plan cannot be assessed. The plan might not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors might receive a higher distribution in a Chapter 7 proceeding. The Debtors and Trustee provide differing values for the real property located at 1716 Lawler Street, Chico, California, $288,340 and $350,000 respectively. At the higher valuation, there would be non-exempt equity for the estate.

The plan filed April 24, 2017, 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.

2. 17-22211-B-13 SHANNON HARTMAN — MOTION TO VALUE COLLATERAL OF EXETER FINANCE
JPJ-1 Pro Se — 6-12-17 [23]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Determine the Value of Collateral for Lien Holder Exeter Finance 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 value.

Debtor's motion to value the secured claim of Exeter Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Challenger SCT Coupe 2D ("Vehicle"). The Debtor seeks to value the Vehicle at $10,984.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Opposition

Creditor has filed an opposition asserting that the replacement value of the Vehicle is $14,529.00. To support this value, Creditor filed as an exhibit a Kelley Blue Book Private Party Value. Dkt. 35, exh. 3. It also appears that the Creditor failed to serve the pro se Debtor. No proof of service was filed with the court.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

Neither the Debtor nor Creditor have provided evidence to support the price a retail merchant would charge for this particular Vehicle. Indeed, both the Debtor and Creditor have submitted as exhibits differing Kelley Bluebook values of the price a private party would pay and not a price a retail merchant would charge. *See* dkts. 25, 35. And while the Debtor has submitted a declaration stating the damages and repairs needed for the Vehicle, it does not appear that the Creditor's valuation took into account the Vehicle's particular condition.

Nonetheless, the Debtor carries the burden to persuade the court regarding its position for the value of the Vehicle. The Debtor has not satisfied its burden. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

3. 17-22712-B-13 DENISE DOXIE
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-17 [25]

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).

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 Debtor filed an amended plan on June 20, 2017. However, it appears that a confirmation hearing for the amended plan has not yet been scheduled. Nonetheless, the earlier plan filed May 26, 2017, is not confirmed.

The court will enter an appropriate minute order.

4. 12-39713-B-13 DONALD FLAVEL
Marc A. Carpenter

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
4-26-17 [138]

Tentative Ruling: Debtor's Objection to Trustee's Notice of Default and Application to Dismiss has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

Debtor objects to the Trustee's Notice of Default and Application to Dismiss on grounds that the Trustee does not provide evidence to support the delinquency amount of $59,441.00 (or $60,861.00 as of June 19, 2017). Debtor further asserts that his mortgage lender, Capital One, N.A., has proposed a stipulation for a post-petition Chapter 13 payment plan that will resolve any potential delinquency in the Debtor's plan payments as asserted by the Trustee in the Notice of Default.

The Trustee has filed a response stating that the reason for the delinquency is due to the ongoing post-petition mortgage payment that has changed multiple times. Trustee asserts that when the mortgage payment increases, the Trustee's office notifies the Debtor and Debtor's attorney by letter advising them of the increased plan payment, the effective date, and the reasons why.

Trustee also asserts that it will not sign the stipulation because: (1) the stipulation does not state what the correct mortgage payment going forward will be, (2) Capital One, N.A. has filed another Notice of Mortgage Payment Change on May 26, 2017, that states it is effective July 1, 2017, and the numbers in that notice do not match those stated in the stipulation, and (3) the stipulation only mentions treatment of future payments and does not mention what, if any, credit will be given to the post-petition payments the Trustee made at the higher amounts over the past two years, how the credit would be treated in the Debtor's mortgage account, or whether these payment will be made in the plan thus affecting the Trustee's Final Report.

5. 17-23118-B-13 JEREMY/LENA JONES — MOTION FOR RELIEF FROM AUTOMATIC STAY
MMN-1 Pauldeep Bains — 5-25-17 [14]

TIFFANY MACLAUGHLIN VS.

Final Ruling: No appearance at the July 3, 2017, hearing is required.

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

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

Tiffany MacLaughlin ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2430 Morse Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Tiffany MacLaughlin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The MacLaughlin Declaration states that Movant is the legal owner of the property. Dkts. 17, Exh. B. Movant seeks to proceed with the unlawful detainer action filed in state court on April 28, 2017.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on April 28, 2017, with a Notice to Quit served on April 23, 2017. Dkt. 17, Exh. C.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

6. 16-25119-B-13 ANDREY GLEYM MOTION TO MODIFY PLAN
MS-1 Mark Shmorgon 5-25-17 [18]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 25, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

7. 17-23022-B-13 CHRISTOPHER FOWLER
JPJ-1 Dale A. Orthner
Thru #8

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-17 [31]

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

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

First, the Debtor has not provided proof of his social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, feasibility of the plan cannot be assessed pursuant to 11 U.S.C. § 1325(a)(4) because the Debtor has not disclosed all of his assets and unsecured creditors might receive a higher distribution in a Chapter 7 proceeding. The Debtor listed on Schedule A/B that his expected 2016 tax refund is $0.00 but testified at the meeting of creditors that he anticipates receiving a refund similar to that of the prior year, which was approximately $8,000. The Debtor also did not disclose his interest in a lawsuit he filed against his mortgage company that is currently pending.

The plan filed May 2, 2017, 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.

8. 17-23022-B-13 CHRISTOPHER FOWLER
TGM-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY GMAT LEGAL TITLE TRUST 2013-1, U.S. BANK, N.A.
6-2-17 [25]

Tentative Ruling: The Objection of U.S. Bank 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.

Objecting creditor U.S. Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $119,175.33 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the

plan cannot be confirmed.

The plan filed May 2, 2017, 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.

9.	17-22427-B-13 JPJ-2	TOLLIFERRO SMITH Hayk Grigoryan	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-25-17 [39]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The Trustee objects to the Debtor's use of 11 U.S.C. § 522(b) to exempt an interest in real property located at 3591 Cattle Drive, Sacramento, California, and a 2013 Honda Civic. California has opted out of the federal exemptions and has elected state exemptions pursuant to California Code of Civil Procedure § 703.130(a). The Debtor has not cited any authority for the proposition that he is entitled to claim an exemption under 11 U.S.C. § 522(b).

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

The court will enter an appropriate minute order.

10. 14-31028-B-13 JUSTIN/MICHELE BROUSSARD MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 5-25-17 [73]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 25, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 25, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

11. 17-23028-B-13 LESIA BANADA
CPG-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-17 [21]

EJ VENTURES, LLC VS.

CASE DISMISSED: 6/28/17

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Debtor's case was dismissed on June 28, 2017, for failure to pay fees. The court's decision is to overrule as moot the motion for relief from stay.

The court will enter an appropriate minute order.

12. 16-28029-B-13 BEVERLY UPCHURCH-ROBINSON
Pro Se

AMENDED MOTION TO CONFIRM PLAN
6-12-17 [62]

Tentative Ruling: The 3rd Amended Motion to Confirm Debtor's Second Amended Chapter 13 Plan was not set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 21 days' notice was provided.

Additionally, there appears to still be insufficient service of process on creditors Aarons Sales and Lease and Capital One Auto Finance. The address used by the Debtor for those creditors does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies.

For the reasons stated above, the court's decision is to deny the motion without prejudice. Furthermore, to avoid unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1), 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.	12-38030-B-13 PGM-4	TIMY/SHERRIE SHERMAN Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 5-30-17 [71]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Application for Additional Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 deny without prejudice the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00. Dkt. 31. Applicant now seeks additional compensation in the amount of $2,400.00 in fees and $0.00 in costs. This is a reduction from $2,895.00 in post-confirmation fees.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 74.

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).

The Applicant here does not address the foregoing standard. Applicant merely states that it was unanticipated that the Chapter 13 Trustee would file a post-confirmation application to dismiss case and that this required plan modification. The Applicant has not sufficiently addressed why the post-confirmation plan modification was substantial. Accordingly, the motion for compensation is denied without prejudice.

The court will enter an appropriate minute order.

14. 15-22030-B-13 ROBERT ROGERS — OBJECTION TO CLAIM OF AMERICAN
MET-1 Mary Ellen Terranella — INFOSOURCE LP, CLAIM NUMBER 7-1
Thru #15 — 5-8-17 [48]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Objection to Allowance of Claim 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. 7-1 and 7-2 of American Infosource LP.

Robert Rogers, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of American Infosource LP ("Creditor"), Claim No. 7-1. Creditor subsequently filed an amended Claim No. 7-2 on May 19, 2017. The claim is asserted to be in the amount of $2,017.35. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach.

Objector contends that Creditor's Statement of Accounts stating a last payment date of August 1, 2011, is unsupported by any evidence. Objector asserts that he did not make payments on any of his unsecured claims since 2010 when his disability became so severe that he became confined in a wheelchair. Objector states that his sole income is Social Security and VA Disability and that he has not had income from employment since 2009. Objector also states that despite requests by Debtor's counsel, the Creditor has not provided Debtor or Debtor's counsel with documentation of any payment made on August 1, 2011.

Discussion

This case was filed on March 15, 2015. A debt would be time barred and disallowed under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), if the last payment was received on or before March 15, 2011. If the last payment was received on or about August 1, 2011, this debt would not be time barred.

The presumptive validity of the proof of claim does not arise in this case. In *Heath v. American Express Travel Related Services Co., Inc. (In In re Heath)*, 331 B.R. 424, 436-437 (9th Cir. BAP 2005) and *Campbell v. Verizon Wireless (In re Campbell)*, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation required by Rule 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the Bankruptcy Appellate Panel concluded that even though the creditors' failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed. In *Heath*, particularly, the BAP noted that the sole basis for disallowing a proof of claim is set out in 11 U.S.C. § 502(b), which does not permit the court to disallow a claim because it has not been appropriately documented. However, *Heath* and *Campbell* both recognize that when a creditor does not provide information or is unable to support its claim, the failure to properly document the proof of claim may itself raise an evidentiary basis to disallow the claim.

The court notes from its review of Creditor's proof of claim 7-2 that it fails to

attach the writing upon which the claim is based as required by Rule 3001(c)(3)(A) and it also fails to include the itemized statement of interest, fees, expenses, and other charges as required by Rule 3001(c)(2)(A). The absence of those supporting documents deprives Creditor's proof of claim of any presumption of prima facie validity. *See* Fed. R. Bankr. Pro. 3001(f); *Heath*, 331 B.R. at 437; *Campbell*, 336 B.R. at 436. Moreover, here, and unlike *Heath* and *Campbell*, Objector has raised a valid basis for disallowance of Creditor's claim, *i.e.*, it is unenforceable because it is barred by the statute of limitations. *See* 11 U.S.C. § 502(b)(1). The objection that the claim is unenforceable is supported by admissible evidence in the form of the Debtor's declaration that he last paid on this claim in 2010. Creditor has not responded to the objection and, thus, has not established any support for the claim asserted in its proof of claim. Therefore, stripped of its presumptive validity and with evidence the debt is unenforceable and not owed, the objection to Claim No. 7-1 as amended by Claim No. 7-2 is sustained and the claim is disallowed in its entirety.

The court will enter an appropriate minute order.

15.	15-22030-B-13 MET-2	ROBERT ROGERS Mary Ellen Terranella	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 3-1 5-8-17 [53]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Objection to Allowance of Claim 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 overrule the objection to Claim No. 3-1 of Cavalry SPV I, LLC.

Robert Rogers, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $1,455.09. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach.

Objector contends that Creditor's Statement of Accounts stating a last payment date of March 2, 2015, is unsupported by any evidence. Objector asserts that he did not make payments on any of his unsecured claims since 2010 when his disability became so severe that he became confined in a wheelchair. Objector states that his sole income is Social Security and VA Disability and that he has not had income from employment since 2009. Objector also states that despite requests by Debtor's counsel, the Creditor has not provided Debtor or Debtor's counsel with documentation of any payment made on March 2, 2015.

Discussion

This case was filed on March 15, 2015. A debt would be time barred and disallowed under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), if the last payment was received on or before March 15, 2011. If the last payment was received on

or about March 2, 2015, this debt would not be time barred.

The court finds that Creditor's proof of claim is properly documented and Objector has not presented substantial and factual basis to overcome the prima facie validity of the proof of claim. The Objector merely asserts that he never made any payments on unsecured claims after 2010 due to his medical condition. This is insufficient to overcome the presumptive validity of the claim. Local Bankr. R. 3007-1(a) ("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."). Based on the evidence before the court, the Creditor's claim is not disallowed.

The court will enter an appropriate minute order.

16. 12-38432-B-13 JOHN/NATALIE PICOTTE MOTION TO MODIFY PLAN
DMB-11 David M. Brady 5-24-17 [205]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Motion to Modify Fourth Amended Chapter 13 Plan Pursuant to 11 U.S.C. § 1329 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17.	17-23032-B-13 JPJ-1	HALSTEAD TOM Robert S. Gimblin	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-8-17 [13]

CONTINUED TO 8/07/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO VALUE COLLATERAL OF GOLDEN ONE CREDIT UNION.

Final Ruling: No appearance at the July 3, 2017, hearing is required. The court will enter an appropriate minute order.

18. 17-22634-B-13 JM-1 **Thru #19**

RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY ONEMAIN FINANCIAL SERVICES, INC.
6-7-17 [15]

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 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.

Objecting creditor Onemain Financial Services, Inc. has a security interest in the Debtors' 2000 Mariah Shabah 202, 2005 Chevrolet Avalanche, and 1999 Sportsboat Tandem Boat Trailer (collectively, "Personal Property"). The creditor has filed a timely proof of claim in which it asserts $15,909.95 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed April 20, 2017, 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.

19. 17-22634-B-13 TGM-1

RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB
6-7-17 [20]

Tentative Ruling: The Objection of Wilmington Savings 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). A written reply has been filed to the objection.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #18.

Wilmington Savings Fund Society, FSB doing business as Christiana Trust, not in its individual capacity but solely as trustee for BCAT 2015-14BTT ("Wilmington Savings"), objects to confirmation on grounds that the Debtors' plan understates the amount of arrearages. Wilmington Savings' claim is secured by real property commonly known as 7921 Rock Springs Road, Penryn, California. Wilmington Savings asserts that the Debtors' arrearages total $34,701.40.

The Debtors filed an objection stating that the delinquency amount stated in Wilmington Savings' objection pertains to Debtor's prior bankruptcy case (no. 15-24061). That case was dismissed on January 23, 2017, but Wilmington Savings, under the creditor name Selene Finance LP, had received $25,612.80 in regular payments and $5,593.92 in payments against the delinquency. *See* case no. 15-24061, dkt. 110. Therefore, the creditor's objection is overruled.

Nonetheless, the plan filed April 20, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #18 and the plan is not confirmed.

The court will enter an appropriate minute order.

20. 17-22740-B-13 KELLI REYNOLDS
JPJ-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-17 [13]

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

The 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 Debtor filed an amended plan on June 22, 2017. The confirmation hearing for the amended plan is scheduled for August 7, 2017. The earlier plan filed April 25, 2017, is not confirmed.

The court will enter an appropriate minute order.

21. 17-20341-B-13 LORENA MONTESINOS MOTION TO CONFIRM PLAN
TAG-2 Aubrey L. Jacobsen 5-16-17 [42]

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

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $210.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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. 17-23141-B-13 CAROL CICCONE
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-15-17 [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 Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan has not been proposed in good faith as required under 11 U.S.C. § 1325(a)(3). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Debtor proposes plan payments of $0.00 per month but her monthly net income as listed on Schedule I is $52.00. Additionally, the plan does not provide for the submission of a portion of the Debtor's future earnings as is necessary to execute the plan. *See* 11 U.S.C. § 1322(a)(1).

Second, although the Debtor testified at the meeting of creditors that she employed a real estate agent to sell her real property in the next 6 months to pay a secured creditor, there is no evidence that the house can actually be sold during this time frame. The Debtor has not carried her burden of showing that she can make any payments under the plan and comply with the plan. *See* 11 U.S.C. § 1325(a)(6).

Third, the plan payment of $0.00 does not equal the aggregate of the Trustee's fees, monthly contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims and/or Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $944.81. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has failed to state the duration of the plan. The plan does not satisfy 11 U.S.C. § 1322(a)(1).

Fifth, the Debtor has failed to amend Schedule A/B or the Statement of Financial Affairs to provide for a safe deposit box. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed May 8, 2017, 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.

23. 17-23242-B-13 SCOTT/CATHERINE GRAHAM — MOTION TO AVOID LIEN OF SUNLAN-020105, LLC
HLG-1 Kristy A. Hernandez — 6-1-17 [17]
Thru #24

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Motion to Avoid Judicial Lien Held by Sunlan-020105, 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Sunlan-020105, LLC ("Creditor") against the Debtors' property commonly known as 4900 Falconwood Way, Antelope, California ("Property").

A judgment was entered against Joint Debtor Catherine Graham in favor of Creditor in the amount of $20,860.67. An abstract of judgment was recorded with Sacramento County on November 24, 2014, which encumbers the Property. All other liens recorded against the Property total $280,306.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $354,294.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 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 Debtors' 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.

24. 17-23242-B-13 SCOTT/CATHERINE GRAHAM — MOTION TO AVOID LIEN OF CAVALRY SPV, I, LLC
HLG-2 Kristy A. Hernandez — 6-1-17 [22]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Motion to Avoid Judicial Lien Held by Cavalry SPV I, 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Cavalry SPV I, LLC ("Creditor") against the Debtors' property commonly known as 4900 Falconwood Way, Antelope, California ("Property").

A judgment was entered against Joint Debtor Catherine Graham in favor of Creditor in the amount of $2,506.48. An abstract of judgment was recorded with Sacramento County on April 24, 2017, which encumbers the Property. All other liens recorded against the Property total $301,166.67 (from $280,306.00 in unavoidable liens plus $20,860.67 senior judicial lien of Sunlan-020105, LLC).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $354,294.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 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 Debtors' 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.

25. 17-23945-B-13 DEMAR RICHARDSON MOTION TO EXTEND AUTOMATIC STAY
PSB-1 Pauldeep Bains 6-19-17 [9]

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.

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 31, 2017, due to delinquency in plan payments and failure to file a new plan and confirmation hearing following the court's denial of a plan (case no. 16-22990, dkts. 59, 62). 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 his circumstances have changed because he has drafted a budget to account for the months in which he makes less money due to his job as a teacher. However, the Debtor has not sufficiently explained how this will be done. A review of Schedules I and J shows that Debtor's household monthly net income has increased by approximately $39. *Compare* case no. 16-22990, dkt. 1, case no. 17-23945, dkt. 1. Yet there has been no effort to reduce expenses and there has actually been an increase in expenses according to Schedule J. The court is not persuaded that this bankruptcy case will be any more successful than the prior case that was dismissed for delinquency in plan payments.

The Debtor has 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 for all purposes and parties.

The court will enter an appropriate minute order.

26. 17-21446-B-13 SHARISE ALLEN — MOTION TO CONFIRM PLAN
BLG-1 Chad M. Johnson — 5-12-17 [22]

Tentative Ruling: The Motion to Confirm First Amended Plan Filed on 5/12/17 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 confirm the first amended plan.

The Trustee filed an opposition stating that the plan payment in the amount of $2,649.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,676.00. The Trustee states further that if the Debtor's attorney is willing to lower his admin dividend listed in Section 2.07 from $170.00 per month to $144.00 per month, the issue will be resolved.

Debtor's attorney filed a response agreeing to lower his admin dividend to $144.00 per month and will provide for this change in the order confirming.

Given the reduction in admin dividend paid to Debtor's attorney, the amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

27. 17-23951-B-13 MICHAEL/NAOMI ALFORD MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 6-15-17 [8]

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

The court's decision is to grant 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on November 19, 2016, due to delinquency in plan payments (case no. 15-27759, dkts. 42, 44). 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).

Debtors assert that the instant case was filed primarily to cure pre-petition arrears owed on the primary residence and retain their property. The Debtors state that their circumstances have changed because Debtor Michael Alford has gained new employment that pays a higher salary than that paid by his previous employer in the prior bankruptcy. However, the court notes that the salary of Joint Debtor Naomi Alford has decreased from the prior bankruptcy. As a result of these changes, the Debtors' total monthly net income is actually less in the present case than the prior case. Nonetheless, the Debtors have made changes to decrease their monthly expenses and have sufficient net income to fund the current plan.

The Debtors have 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.

28. 13-35853-B-13 MARLO MACALINO — MOTION TO MODIFY PLAN
SNM-1 Stephen N. Murphy — 5-15-17 [23]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

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

The court will enter an appropriate minute order.

29. 17-23053-B-13 JPJ-1 — STEVEN/TAMARA WILLIAMS, Bruce Charles Dwiggins — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-15-17 [19]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed May 10, 2017, will be confirmed.

The court will enter an appropriate minute order.

30. 17-20155-B-13 RUMMY SANDHU
PGM-4 Peter G. Macaluso

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2
5-17-17 [61]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Debtor's Objection to the Claim of Cavalry SPV I, LLC Filed April 19, 2017, Claim #2-1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

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

Rummy Sandhu, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 2-1. The claim is asserted to be in the amount of $35,572.80. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about December 5, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 10, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Attorneys' Fees Requested

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

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

The court will enter an appropriate minute order.

31. 17-22556-B-13 LOUIS/HELEN GARCIA
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-17 [13]

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

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

Chapter 13 Trustee Jan Johnson objects to confirmation of the plan on grounds that the Debtors have not yet filed a motion to value collateral for Internal Revenue Service. Debtors submitted a response stating that the IRS filed amended Claim No. 1-2 in the amount of $40,183.86 with $11,181.50 claimed as secured and an interest rate of 4.00%. Debtors state that they shall provide for the increased interest rate and an increased dividend in the order confirming.

The Trustee also objects to plan confirmation on grounds that the Debtors have failed to file an amended Statement of Financial Affairs to list their pension and social security incomes. The Debtors filed an amended Statement of Financial Affairs and amended Schedules I and J on June 19, 2017.

Provided that the order confirming account for the increase in interest rate and dividend to IRS, the plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed April 24, 2017, is confirmed.

The court will enter an appropriate minute order.

32. 16-28058-B-13 CASEY HONSA MOTION TO MODIFY PLAN
SNM-3 Stephen N. Murphy 5-22-17 [36]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation and Confirm First Modified 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 deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed a new modified plan on June 29, 2017. The confirmation hearing for the modified plan is scheduled for August 15, 2017. The earlier plan filed May 22, 2017, is not confirmed.

The court will enter an appropriate minute order.

33. 17-22665-B-13 MARK/ANN VUKICH
AP-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
6-15-17 [13]

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 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.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $948.71 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed April 21, 2017, 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.

34. 14-22173-B-13 YOLANDA SWARTOUT
Eamonn Foster

MOTION FOR COMPENSATION FOR EAMONN FOSTER, DEBTOR'S ATTORNEY
6-1-17 [128]

Tentative Ruling: The Application and Declaration Re: Additional fees and Expenses in Chapter 13 Cases 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 deny without prejudice the motion for compensation.

Before the court is a motion for attorney's fees and expenses filed by Eamonn Foster ("Counsel"). Counsel represents Debtor Yolanda Christine Swartout ("Debtor") in the above-captioned Chapter 13 case. Counsel requests attorney's fees and expenses incurred in an appeal from an order dismissing this Chapter 13 case. For the reasons explained below, Counsel's request will be denied without prejudice.

Background

The court dismissed this case for what it perceived as Counsel's failure to comply with an order of this court. Counsel sought reconsideration of the dismissal order which the court denied. Counsel then appealed both the dismissal order and the order denying reconsideration to the bankruptcy appellate panel. In an unpublished memorandum decision, the bankruptcy appellate panel vacated the dismissal order and remanded for this court to reinstate this Chapter 13 case. The bankruptcy appellate panel concluded that dismissal without warning for what may or may not have been a formal and "clear order" for Rule 41(b) purposes was too harsh a penalty to impose on the Debtor who had no involvement in Counsel's conduct, i.e., not filing an amended plan as instructed by the court, which the appellate panel described as "transgressions". Dkt. 125 at 10:14-16, 11:23-27.

Counsel initially requested $10,000.00 in attorney's fees and $298.00 in expenses for a total award of $10,298.00. Counsel asked the court to order attorney's fees and expenses paid by the Debtor through her confirmed and reinstated Chapter 13 plan. However, Counsel failed to serve his client with the motion thus creating the impression that Counsel failed to inform the Debtor that she faced the enormous burden of an additional $10,298.00 debt in order to complete her plan and receive her discharge. Counsel has provided a task billing analysis and supporting evidence of the amount requested and services provided. Dkt. 136.

The Trustee objected to Counsel's request on the basis that $10,298.00 in attorney's fees and expenses paid through the Debtor's confirmed plan would cause the plan to complete in 118 months in violation of 11 U.S.C. §§ 1322(d) and 1325(b)(4). The Trustee served the opposition on the Debtor so, presumably, the Debtor is now aware of Counsel's request.

Based on the Trustee's response, Counsel modified his initial request. Counsel now states in his reply that he will gladly accept whatever the Debtor's plan will accommodate to allow it to complete within 60 months and any unpaid amounts will be discharged. There's no indication what amount that might be.

Discussion

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation 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). Post-confirmation attorney's fees and expenses must also be reasonable.

Counsel bears the burden of demonstrating that the requested attorney's fees and expenses 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.

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 dkt. 136 are lumped: 04/20/16; 05/17/16; 07/05/16; 07/05/16; July-August 2016; March, 2017. Each of these entries include multiple, vague, and unrelated tasks on a single day with a single time entry for all tasks performed on the particular date. The latter two entries include monthly as opposed to daily totals. There are no separate time entries 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 attorney's fees and expenses requested.

Therefore, for the foregoing reasons, Counsel's request for attorney's fees and expenses will be denied without prejudice.

The court will enter an appropriate minute order.

35. 14-32275-B-13 RAY/ROSE DEPRIEST — MOTION FOR RELIEF FROM AUTOMATIC STAY
MSK-5 W. Scott de Bie — 6-5-17 [65]

REVERSE MORTGAGE SOLUTIONS, INC. VS.

Final Ruling: No appearance at the July 3, 2017, hearing is required.

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

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

Reverse Mortgage Solutions, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 428 York Drive, Benicia, California (the "Property"). Movant has provided the Declaration of Blake Thomas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Thomas Declaration states that the terms and conditions of the note and mortgage are in default due to Debtors' failure to perform an obligation under the mortgage by filing to maintain post-petition property taxes and insurance in the amount of $4,119.63. This amount consists of post-petition property taxes of $3,882.50 and post-petition property insurance of $237.13.

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 $436,674.89 as stated in the Thomas Declaration. The value of the Property is determined to be $594,000.00 as stated in Schedules A and D filed by Debtors.

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).

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.

Attorneys' Fees Requested

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

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.

36.	12-39396-B-13 PGM-6	CASWELL/DOROTHY JOHNSON Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 5-30-17 [111]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Application for Additional Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 deny without prejudice the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00. Dkt. 60. Applicant now seeks additional compensation in the amount of $700.00 in fees and $0.00 in costs. This is a reduction from $1,425.00 in post-confirmation fees.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 114.

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).

The Applicant here does not address the foregoing standard. Applicant merely states that it was unanticipated that the Chapter 13 Trustee would file a post-confirmation application to dismiss case and that this required plan modification. The Applicant has not sufficiently addressed why the post-confirmation plan modification was substantial. Accordingly, the motion for compensation is denied without prejudice.

The court will enter an appropriate minute order.

37. 17-23599-B-13 LINDA CLARKE
HAW-1 Helga A. White
Thru #38

MOTION TO VALUE COLLATERAL OF CARRINGTON MORTGAGE SERVICES, LLC
6-2-17 [10]

Tentative Ruling: Debtor's Motion to Value Collateral of Carrington Mortgage Services LLC, or Loan No. XXX9439 at Zero has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Carrington Mortgage Services LLC at $0.00.

Debtor seeks to value the secured claim of Carrington Mortgage Services LLC ("Carrington"), holder of a second deed of trust against real property commonly known as 6732 Copper Glen Circle, Roseville, California ("Property"). A first deed of trust is also held by Carrington Mortgage Services LLC.

Debtor is the owner of the Property and seeks to value it at a fair market value of $365,000.00 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.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by either Carrington or Deutsche Bank for the claim to be valued.

Opposition

Deutsche Bank objects to Debtor's motion to value on grounds that the Debtor is

actually attempting to avoid the first deed of trust and not the second deed of trust. Deutsche Bank also disputes Debtor's valuation of the Property.

Deutsche Bank's interest in the Property is evidenced by an Assignment of Deed of Trust dated June 24, 2016. Dkt. 36, exh. 10-1. This assignment was prepared by Carrington Foreclosure Services, LLC and establishes the transfer from New Century Home Equity Loan Trust[1] to Deutsche Bank all the interests under deed of trust Loan xxx8939, 2005-0057311. No evidence of assignment as to deed of trust Loan xxx9439, 2005-0057310 has been provided.

Discussion

According to the exhibits filed with the court, Loan xxx8939, 2005-0057311 is secured by a first priority lien ("First Deed of Trust") and Loan xxx9439, 2005-0057310 is secured by a second priority lien ("Second Deed of Trust"). *See* dkt. 39, exhs. 2, 8-1. Debtor seeks to avoid deed of trust Loan xxx9439, 2005-0057310. This is the Second Deed of Trust and not the First Deed of Trust as asserted by Deutsche Bank.

To the extent the Deutsche Bank objects to the Debtor's opinion of value, that objection is overruled, particularly in light of its failure to file any contrary evidence of value. In the absence of contrary evidence of value, a debtor's opinion of value ma be accepted as conclusive. *Enewally*, 368 F.3d at 1173. According to the Debtor, the residence has a fair market value of $365,000.00. Evidence in the form of the Debtor's declaration supports the valuation motion. The Debtor may testify regarding the value of property owned by the Debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc., v. Security State Bank*, 614 F.2d 1056, 1061 (5 Cir. 1980).

The first deed of trust secures a claim with a balance of approximately $380,558.97. Carrington Mortgage Services LLC's second deed of trust secures a claim with a balance of approximately $94,000.00. Therefore, Carrington's claim secured by a junior deed of trust is completely under-collateralized. Carrington'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.

38.	17-23599-B-13 HAW-2	LINDA CLARKE Helga A. White	MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA 6-2-17 [21]

Final Ruling: No appearance at the July 3, 2017, hearing is required.

The Motion to Value Collateral of Santander Consumer USA 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

[1] New Century had provided Debtor with a total home loan amount of $430,000.00 in 2005. Instead of granting her a loan under one promissory note and secured by one deed of trust, New Century had provided Debtor with two loans: Loan xxx8939 for $344,000.00 secured by a first priority lien and Loan xxx9439 for $86,000.00 secured by a second priority lien. Dkt. 39, exhs. 5, 6, 7-1. Thereafter, on May 23, 2007, Carrington purchased New Century's assets and contract rights related to mortgage loans in the bankruptcy case 2007-10461. Dkts. 18, 19.

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 Santander Consumer USA at $15,000.00.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Lexus LS 460 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Santander Consumer USA Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on May 2, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $23,271.94 based on Claim No. 2-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $15,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.