UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 17, 2017 at 11:00 a.m.

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1. 16-22507-B-13 MARK/CAROL RHYNE — MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso — 6-7-17 [56]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on June 7, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Chapter 13 Trustee Jan Johnson objects to confirmation on grounds that the plan provides for payment of post-petition liability to the Franchise Tax Board for the 2016 tax year in Class 5 but no proof of claim for the post-petition liability has been filed in accordance with 11 U.S.C. § 1305(a).

Debtors filed a response stating that they filed a supplemental priority claim on July 7, 2017, Claim No. 29, in the amount of $4,971.00 for the Franchise Tax Board with the basis of the claim being the post-petition tax debt for year 2016 in accordance with 11 U.S.C. § 1305.

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

The court will enter an appropriate minute order.

2.	17-22511-B-13 JGL-1	JOHN DUNNE Jennifer G. Lee	CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES 5-21-17 [16]

Final Ruling: No appearance at the July 17, 2017, hearing is required. A stipulation was entered into between Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services. The court entered an order approving the stipulation on July 10, 2017.

The court will enter an appropriate minute order.

3. 17-21213-B-13 MORGAN PROVIDENCE MOTION TO CONFIRM PLAN
MRL-2 Mikalah R. Liviakis 5-15-17 [34]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on May 15, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

4. 17-23313-B-13 VIRGIL EVANS — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1 Jonathan D. Matthews — 6-12-17 [30]

WELLS FARGO BANK, N.A. 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 19 Redhead Street, American Canyon, California (the "Property"). Movant has provided the Declaration of Jessica Rudynski to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rudynski Declaration states that the Debtor is not the borrower under the note or deed of trust. The original borrower under the promissory note is Jessie M. Tate, and the deed of trust was signed by Mr. Tate and a Terese Robinson. Dkt. 35, exhs. A, B. Debtor's interest in the property originates from an amendment to the Redhead Trust dated December 15, 2015, which gave Debtor a 10% interest in the Property. Dkt. 35, p. 123.

The Declaration states that the loan is contractually due for September 15, 2007, and that 117 payments have come due but none have been made. The contractual delinquency as of May 31, 2017, exclusive of fees, charges, and other costs, totals $386,527.10.

Movant requests relief from the automatic stay on grounds that there is cause for failure to make payments pursuant to 11 U.S.C. § 362(d)(1) and because the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud Movant pursuant to 11 U.S.C. § 362(d)(4).

Response

Debtor asserts that the present bankruptcy was filed in good faith and in an effort to save his home located at 707 Daniels Avenue, Vallejo, California. Debtor states that he is actively pursuing a loan modification for this home in Vallejo, California, and that the Movant is trying to "unnecessarily speed up the natural workings of the court . . . when [t]he bankruptcy case is nearing its end." Debtor further states that there was no scheme to delay or hinder Movant because he timely filed his schedules and other required documents within a two-week period.

Discussion

Debtor's response fails to address the issues raised in Movant's motion. Debtor's opposition pertains to his primary residence located at 707 Daniels Avenue, Vallejo, California. Movant's motion pertains to property located at 19 Redhead Street, American Canyon, California, which Debtor holds a 10% interest under the terms of amended Redhead Trust dated December 15, 2015 (dkt. 35, p. 123), and as stated in Schedule A/B (dkt. 10, p. 1).

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 (9th Cir. BAP 1986); *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 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 (9th Cir. BAP 1985).

Additionally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

Although this is just the second case filed by the Debtor after his first case was voluntarily dismissed (case no. 16-22447), it appears that the Debtor was part of a greater scheme to thwart Movant from foreclosing on the Property located at 19 Redhead Street, American Canyon, California. Since 2011, the original borrower Mr. Tate and co-trustor Ms. Robinson have gone through great lengths to prevent scheduled foreclosures on the Property.

On August 18, 2011, the Property was quitclaimed to Mr. Tate and a Carl Gonsalves as joint tenants. Dkt. 35, p. 42. Mr. Gonsalves filed for bankruptcy on August 28, 2011, in the Eastern District of California preventing a scheduled foreclosure on October 13, 2011. The Gonsalves bankruptcy was dismissed on December 22, 2011, for failure to appear at the § 341 meeting. *See* case no. 11-9307. Thereafter, Mr. Tate filed for bankruptcy in the Northern District of California on March 26, 2014, and the case was dismissed for failure to appear at the § 341 meeting. *See* case no. 14-10438. And then Ms. Robinson filed for bankruptcy in the Northern District of California on November 18, 2014, and the case was dismissed for abuse of the bankruptcy system and Ms. Robinson was barred from filing a bankruptcy petition for a two-year period. *See* case no. 14-11610.

On April 28, 2015, the Property was transferred by Mr. Tate to a Redhead Trust ("Trust") for the benefit of grantor Mr. Tate. Dkt. 35, p. 52.

The first amendment to the Trust occurred on December 15, 2015. It listed beneficiaries as Mr. Tate (45%), Ms. Robinson (45%), and Debtor (10%).

The second amendment to the Trust occurred a month later on January 16, 2016. It listed beneficiaries as Mr. Tate (45%), Ms. Robinson (45%), and a Wesley Stetenfeld (10%). Mr. Stetenfeld filed for bankruptcy on February 12, 2016, in the Eastern District of California. Movant was not notified of the bankruptcy until three days before its scheduled foreclosure sale, at which time it halted the foreclosure proceeding. The case was ultimately dismissed on April 26, 2016, for failure to make plan payments. *See* case no. 16-20792.

Then on April 18, 2016, Debtor filed his first bankruptcy petition in the Eastern District of California. Debtor subsequently filed a motion for voluntary dismissal, which was granted thereby dismissing the case. *See* case no. 16-22447.

The third amendment to the Trust occurred on April 16, 2016. It listed beneficiaries as Mr. Tate (45%), Ms. Robinson (45%), and a Paul Reeder (10%). Mr. Reeder filed for bankruptcy in the Southern District of California on January 12, 2017. Movant was not notified of the bankruptcy until two days before its scheduled foreclosure sale, at which time it halted the foreclosure proceeding. The case was dismissed on March 31, 2017, for other reasons. *See* case no. 17-00136.

The fourth amendment to the Trust occurred on April 30, 2016. It listed beneficiaries as Mr. Tate (45%), Ms. Robinson (45%), and a Lisa Booker (10%). Ms. Booker filed for bankruptcy on September 12, 2016, in the Eastern District of California. Movant was

not notified of the bankruptcy until five days before its scheduled foreclosure sale, at which time it halted the foreclosure proceeding. The case was dismissed on December 19, 2016, for failure to make plan payments. *See* case no. 16-10778.

And now finally, on May 16, 2017, the Debtor filed his second bankruptcy petition, which is before this court.

In the eight bankruptcy proceedings that have spanned six years and three districts in California, the court finds that the filing of each of these bankruptcies was primarily to prevent Movant from foreclosing on its Property. The Property has passed through multiple parties, including the Debtor, and each of these parties has filed for bankruptcy and all of these cases were dismissed. Since the Debtor was part of a greater scheme to delay, hinder, or defraud the Movant, the court is not persuaded that the Debtor has filed this bankruptcy petition in good faith.

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 waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

5. 17-22214-B-13 RICHARD CRABTREE MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs 5-30-17 [21]

Tentative Ruling: The Motion for Hearing on Confirmation of 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 deny the motion to confirm as moot, overrule the objection as moot, and extend the deadline to confirm a plan to September 12, 2017.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 13, 2017, to list the debt to Nissan Motor Acceptance in Class 2 instead of Class 4. The confirmation hearing for the amended plan is scheduled for September 5, 2017. Because this is after the 75 day deadline to confirm a plan, the Debtor requests an extension on the deadline to confirm. The deadline shall be extended to September 12, 2017.

The Debtor has also filed a stipulation between Debtor and the Internal Revenue Service stating that the Debtor shall pay the IRS through the plan and that the remaining balance of the priority claim shall be held in abeyance pending completion of the Chapter 13 plan at which time the IRS may pursue the remainder of the claim against the Debtor.

The earlier plan filed May 30, 2017, is not confirmed.

The court will enter an appropriate minute order.

6. 14-29215-B-13 JEFFERY/SANDRA THOMAS MOTION TO MODIFY PLAN
JPJ-3 Mary Ellen Terranella 5-24-17 [91]

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

The matter will be determined at the scheduled hearing.

Chapter 13 Trustee Jan Johnson requests that the court enter an order modifying the plan increasing plan payments to $3,189.00 per month beginning June 25, 2017, and continuing through Month 60. Debtors are currently in month 30 of the plan confirmed on May 1, 2015. Based on documents requested by and sent to the Trustee, the Debtors' monthly gross income has increased from $13,208.00 to $15,984.96, and their monthly net income has increased from $9,522.00 to $10,979.00. The Debtors did not amend their original schedules filed September 14, 2014, to reflect their change in financial circumstances nor did they modify the plan to increase plan payments. Trustee proposes that plan payments should increase from $1,789.00 to $3,189.00 beginning June 25, 2017. This would increase the amount paid to general unsecured creditors from 15% to 30%.

Debtors have filed an opposition stating that they do not have $1,400.00 in additional disposable income to contribute to the plan. Debtors state that there have been and will be various increased expenses including an increase in their mortgage, necessary equipment and supplies related to Debtor's employment as a California Highway Patrol sergeant, replacement of their air conditioner, dental expenses not covered by insurance, braces for their son, routine repairs on their cars, fees for Joint Debtor's citizenship application, and a past funeral expenses for Debtor's mother. Yet despite the fact that some of these expenses are known to reoccur each month, the Debtors have not filed amended schedules since September 14, 2014.

7.	17-23120-B-13 MRG-1	JUDY TASHJIAN Jasmin T. Nguyen	OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC 6-22-17 [18]

Tentative Ruling: The Objection to Confirmation of Debtor's 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.

Objecting creditor Bosco Credit, LLC holds a deed of trust secured by the Debtor's residence. The creditor asserts $14,077.03 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.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 5, 2017, is confirmed.

The court will enter an appropriate minute order.

8.	17-21321-B-13 17-2065 TRI COUNTIES BANK V. WANG ET AL	PEINING WANG AND LIPING KONG DBJ-3	MOTION FOR COMPENSATION BY THE LAW OFFICE OF JACOBS, ANDERSON, POTTER & CHAPLIN FOR DOUGLAS B. JACOBS, PLAINTIFFS ATTORNEY(S) 6-29-17 [33]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Costs and Attorney Fees 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 in part and deny in part the motion for compensation.

FEES AND COSTS REQUESTED

Tri Counties Bank ("Applicant"), the plaintiff in adversary proceeding 17-2065 against defendant-Debtors, requests for the allowance of $912.00 in fees and $350.00 in costs. The fees and costs are requested pursuant to Fed. R. Civ. Proc. 54(b) and 58(e), as made applicable to adversary matters by Federal Rules of Bankruptcy Procedure 7054(b) and 7058(e) respectively, and California Code of Civil Procedure § 1717, which provides for the recovery of attorney's fees to a prevailing party on an action on a contract.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 36, p. 27.

STATUTORY BASIS FOR FEES AND COSTS TO A PREVAILING PARTY

With regard to attorney's fees, California courts uniformly have ruled that Cal. Civ. Code § 1717 is to be narrowly applied, and is available to a party only if a dispute involves litigation of a contract claim. Based on California controlling law and its own authority, the United States Bankruptcy Appellate Panel for the Ninth Circuit has held that Cal. Civ. Code § 1717 only can be applied to attorney's fees disputes based on contract claims. *Seyed Shahram Hosseini v. Key Bank N.A. (In re Seyed Shahram Hosseini)*, 504 B.R. 558, 567 (9th Cir. BAP 2014).

But before § 1717 comes into play, statutory analysis must begin with California Code of Civil Procedure § 1021, which states, "Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . . ." Thus, it is necessary to determine whether the parties entered into an agreement for the payment of attorney fees and, if so, the scope of the attorney fee agreement. *Maynard v. BTI Group, Inc.*, 216 Cal. App. 4th 984, 989-990 (2013).

A contractual provision may provide that the party who prevails in litigation over noncontractual claims shall recover its attorney's fees. However, it is often unclear in contractual attorney's fee provisions entitling the prevailing party to an award of attorney's fees whether the parties intended fees to be recovered by the party who prevails only on a breach of contract claim, or by the party who prevails in the action as a whole. If the latter, neither § 1717 nor any other provision precludes an award of attorney fees to a party prevailing on a tort claim. *Id.* at 990.

Here, Applicant states that "the prevailing party shall be entitled to recover its attorney fees in any action on a contract . . . ." Dkt. 35. But the adversary proceeding commenced by Applicant was not an action on a contract, but rather an action based on non-dischargeability of debt under 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). The Applicant conflates § 1717 and § 1021, and it does not analyze any agreement entered into with the Debtors for the payment of attorney's fees. Applicant merely cites to its Consumer Deposit Account Agreement and Disclosures (dkt. 36, p.

17), which is dated September 1, 2016, is not signed by the Debtors, and did not exist at the time Debtors opened their checking account on August 2, 2013 (dkt. 36, p. 2). Without any agreement between Applicant and Debtors stating that whoever prevails in litigation over noncontractual claims shall recover its attorney's fees and without any analysis how the action was on a contract, if at all, Applicant's request for attorney's fees is denied without prejudice. *See Cohen v. de la Cruz*, 523 U.S. 213, 220-21 (1998); *Cardenas v. Shannon (In re Shannon)*, 553 B.R. 380, 394 (9th Cir. BAP 2016).

With regard to costs, Fed. R. Bankr. P. 7054(b) provides, in part, that a court may allow costs to a prevailing party except when a statute of the United States or the Federal Rules of Bankruptcy Procedure otherwise provides. Rule 7054(b) arises from Fed. R. Civ. P. 54(d)(1), which provides, in part, that unless a federal statute, the Federal Rules of Civil Procedure, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. Rule 54(d)(1) appears mandatory in nature, as it states that costs "should be allowed" unless it or a federal statute or rule otherwise directs. On the other hand, Rule 7054(b) is permissive in nature, as it states that the bankruptcy court "may allow costs." Although it has broad discretion in determining whether to deny costs, a bankruptcy court must state its reasons for denying them. *In re Seyed Shahram Hosseini*, 504 B.R. at 564.

The court finds that the costs associated with the Applicant's work in the adversary proceeding were reasonable. Therefore, costs in the amount of $350.00 shall be granted.

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

Fees	$ 0.00
Costs and Expenses	$350.00

The court will enter an appropriate minute order.

9. 16-28428-B-13 DANZHEL TU MOTION TO CONFIRM PLAN
ADR-1 Justin K. Kuney 5-23-17 [28]

Tentative Ruling: Debtor's 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 has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor testified at the meeting of creditors held on February 2, 2017, that she owns a Honda vehicle. This vehicle was not disclosed on Schedule A/B filed December 25, 2016, and to date the Debtor has not filed an amended schedule to disclose her interest in this vehicle. 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 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.

10. 17-23028-B-13 LESIA BANADA
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
6-22-17 [28]

DEBTOR DISMISSED: 06/28/2017

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The case having been dismissed on June 28, 2017, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

11.	17-22634-B-13 JM-1 **Thru #13**	RANDY RICHARDSON AND JACQUELYN W. Steven Shumway	CONTINUED 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 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.

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

This matter was continued from July 17, 2017, to be heard in conjunction with the Debtors' motions to value. As stated below, the motions to value are denied without prejudice.

The objection by creditor Onemain Financial Services, Inc. states that creditor 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.

12.	17-22634-B-13 WSS-1	RANDY RICHARDSON AND JACQUELYN W. Steven Shumway	MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES 6-12-17 [25]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The Motion to Value 2005 Chevrolet Avalanche 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 deny without prejudice the motion to value.

Debtors' motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by the Declaration of Randy Richardson. Debtors are the owners of a 2005 Chevrolet Avalanche ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $4,813.00 as of the petition filing date. As the owner, Debtors' 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 OneMain Financial Services, Inc. is the claim which may be the subject of the present motion.

Discussion

The Debtors provide no evidence as to the date the purchase-money loan was incurred. The court cannot determine whether the Vehicle was incurred more than 910 days prior to filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

The court will enter an appropriate minute order.

13. 17-22634-B-13 WSS-2 — RANDY RICHARDSON AND JACQUELYN, W. Steven Shumway — MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, 6-12-17 [29]

Tentative Ruling: The Motion to Value 2000 Mariah Boat and 1999 Boat Trailer 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 to value.

Debtors' motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by the Declaration of Randy Richardson. Debtors are the owners of a 2000 Mariah Z202 boat and 1999 boat trailer. Debtors seek to value the boat at a replacement value of $6,890.00 and the boat trailer at a replacement value of $630.00 as of the petition filing date. According to the Debtors, these are the valuations provided by Creditor and which the Debtors agree. 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).

Proof of Claim Filed

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

Opposition

Creditor has filed an opposition asserting the replacement value of the boat at $7,870.00 and the boat trailer at $630.00. Creditor argues that the Debtors have made no indication why the court should use the "Low Retail Value" of $6,890.00 versus the "Average Retail Value" of $7,870.00 and that the Debtors' motion should therefore be denied.

Discussion

In the Chapter 13 context, the replacement value of personal property used by debtors 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).

The Debtors have not persuaded the court regarding their position for the value of the boat or boat trailer. Although the Debtors state that they agree with the Creditor's valuations for the boat and boat trailer, Debtors' valuation for the boat actually differs from that of the Creditor. The Debtors have provided no evidence in the form of exhibits or declarations as to the condition of the boat and why it should be valued at the low retail value of $6,890.00. 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.

14.	17-23337-B-13 JPJ-1	DOUGLAS/TRINA HAMMONS Robert S. Gimblin	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 6-22-17 [16]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on July 7, 2017. The confirmation hearing for the amended plan is scheduled for August 22, 2017. The earlier plan filed May 16, 2017, is not confirmed.

The court will enter an appropriate minute order.

15. 17-21038-B-13 ANTHONY/RENEE TOKUNO MOTION TO CONFIRM PLAN
DJC-2 Diana J. Cavanaugh 5-31-17 [36]

Tentative Ruling: The Motion to Confirm Debtors' 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 Debtors are delinquent to the Chapter 13 Trustee in the amount of $3,100.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $3,100.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend due to Nationstar Mortgage, LLC listed in Class 1. The plan cannot be effectively administered.

Third, the plan understates the claim of the Internal Revenue Service in Class 5 at $23,119.55. The proof of claim filed by the Internal Revenue Service shows $28,304.28 as the amount entitled to priority. The plan will take approximately 67 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the plan payment in the amount of $3,100.00 for the first 14 months does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $3,290.00. The plan does not comply with Section 4.02 of the mandatory form plan.

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.

16. 13-35642-B-13 LARRY/COLLEEN EDWARDS MOTION TO MODIFY PLAN
JPJ-2 Peter G. Macaluso 5-23-17 [109]

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

The matter will continued to August 1, 2017, so that Debtors can file supplemental declarations to address the Chapter 13 Trustee's concerns regarding Debtors' amended Schedules I and J filed June 27, 2017.

The court will enter an appropriate minute order.

17. 17-23242-B-13 SCOTT/CATHERINE GRAHAM — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Kristy A. Hernandez — 6-22-17 [28]

Tentative Ruling: The 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, feasibility depends on the granting of two motions to avoid lien of Cavalry SPV I, LLC and Sunlan-020105, LLC. Those motions were granted on July 11, 2017. Dkts. 41, 42.

Second, Form 122C-2, Line 9b, includes two improper expenses in the amount of $42.42 (Cavalry SPV I, LLC) and $421.71 (Sunlan-020105, LLC). The debts owed to these creditors are wholly unsecured debts. Payments to wholly unsecured creditors do not qualify as deductions and must be excluded from Form 22C. *Thissen v. Johnson*, 406 B.R. 888, 894 (E.D. Cal. 2009). Upon adding $42.42 and $421.71 from Form 122C-2, Line 9b, the Debtors must pay no less than $86,501.40 to their unsecured, non-priority creditors. Debtors' plan proposes to pay $53,381.06 to their unsecured, non-priority creditors.

The plan filed May 12, 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.

18. 16-26843-B-13 CHERYL BACH MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 6-6-17 [35]

Final Ruling: No appearance at the July 17, 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 June 6, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

19. 17-23146-B-13 RAYMOND CORREA — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Taras Kurta — 6-22-17 [18]

CONTINUED TO 8/01/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA.

Final Ruling: No appearance at the July 17, 2017, hearing is required. The court will enter an appropriate minute order.

20. 12-30648-B-13 SDB-4 | GREGORY/MIJA TRUMBULL
W. Scott de Bie | MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC.
6-13-17 [53]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

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

The court's decision is to value the secured claim of Citimortgage, Inc. at $0.00.

Debtors' motion to value the secured claim of Citimortgage, Inc. ("Creditor") is accompanied by the Declaration of Gregory Trumbull. Debtors are the owners of the subject real property commonly known as 1130 Valley Glen Drive, Dixon, California ("Property"). Debtors seek to value the Property at a fair market value of $240,000.00 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).

A motion to value the collateral was filed on July 5, 2012. Dkt. 17. The court determined on August 16, 2017, that the value of the collateral available to Citibank, N.A. on its second deed of trust was $0.00. Dkts. 26, 27. However, because service of that motion may not have been sufficient to satisfy due process requirements, Debtors have filed this present motion to value collateral.

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. 10-1 filed by Citimortgage, Inc. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance as of the petition date of approximately $356,736.25. Creditor's second deed of trust secures a claim with a balance of approximately $124,194.38. 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 (9th Cir. BAP 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.

21. 17-22648-B-13 DONALD TRECO
RAH-1 Richard A. Hall
MOTION TO CONFIRM PLAN
5-18-17 [19]
Thru #23

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated May 18, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Chapter 13 Trustee Jan Johnson objects to confirmation on grounds that feasibility depends on the granting of motions to value collateral of Alaska USA Federal Credit Union and Thunderroad Financial, LLC, and that the Debtor is delinquent to the Trustee in the amount of $1,360.00 representing one plan payment. The Debtor's attorney has acknowledged that he is willing to lower his attorney's fees to $130.00 per month so that monthly plan payments can cash flow.

However, even if the Debtor becomes current by the date of the hearing and attorney's fees are reduced, the plan cannot be confirmed since the motions to value collateral of Alaska USA Federal Credit Union and Thunderroad Financial, LLC are denied without prejudice below.

Therefore, the amended plan filed May 18, 2017, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

As for the amended plan filed July 3, 2017, that plan was not set for hearing on 42-days' notice. The plan must be set for hearing with sufficient notice.

The court will enter an appropriate minute order.

22. 17-22648-B-13 DONALD TRECO
RAH-2 Richard A. Hall
MOTION TO VALUE COLLATERAL OF ALASKA USA FEDERAL CREDIT UNION
7-3-17 [32]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral 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.

However, there appears to be insufficient service of process on Alaska USA Federal Credit Union. The address used by the Debtor 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. In fact, it appears that the address used was a branch/ATM address of Alaska USA Federal Credit Union. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

23. 17-22648-B-13 DONALD TRECO
RAH-3 Richard A. Hall
MOTION TO VALUE COLLATERAL OF THUNDER ROAD FINANCIAL
7-3-17 [37]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral 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.

However, there appears to be insufficient service of process on Thunderroad Financial, LLC. The address used by the Debtor 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. The Debtor may have opted to utilize the notice address of Thunderroad Financial, LLC listed on Claim No. 1-1 due to the identical P.O. Box numbers. However, the city, state, and zip code are incorrect. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

24. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
RCO-1 Peter G. Macaluso — 6-30-17 [29]
Thru #26

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). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at **7801 Verna Mae Avenue, Sacramento, California** ("Property"). The creditor asserts $0.00 in pre-petition arrearages and a principal balance of $132,380.20. No proof of claim has been filed. Creditor asserts that the Debtors' plan does not provide any treatment for its claim, fails to provide for ongoing payments, and fails to surrender the Property. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

Debtors have filed a response stating they had filed for Chapter 7 relief in September 15, 2012, and in that proceeding had surrendered the property located at 7290 Jerry Way, Sacramento, California. The Debtors state that they are not opposed to adding a provision to the order confirming to provide for this property as a Class 3 claim. However, the Debtors make no mention of the Property located on Verna Mae Avenue.

25. 17-23951-B-13 MICHAEL/NAOMI ALFORD — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
RCO-1 Peter G. Macaluso — 6-28-17 [16]

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). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at **7290 Jerry Way, Sacramento, California** ("Property"). The creditor asserts $280.00 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, and the Declaration provided by the creditor does not provide any supporting evidence.

Debtors have filed a response stating they had filed for Chapter 7 relief in September 15, 2012, and in that proceeding had surrendered the Property. The Debtors state that they are not opposed to adding a provision to the order confirming to provide for the Property as a Class 3 claim.

26. 17-23951-B-13 MICHAEL/NAOMI ALFORD
RCO-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-30-17 [23]

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). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at **7280 Jerry Way, Sacramento, California** ("Property"). The creditor asserts $0.00 in pre-petition arrearages and a principal balance of $139,209.96. No proof of claim has been filed. Creditor asserts that the Debtors' plan does not provide any treatment for its claim, fails to provide for ongoing payments, and fails to surrender the Property. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

Debtors have filed a response stating they had filed for Chapter 7 relief in September 15, 2012, and in that proceeding had surrendered the property located at 7290 Jerry Way, Sacramento, California. The Debtors state that they are not opposed to adding a provision to the order confirming to provide for this property as a Class 3 claim.

27. 17-24252-B-13 CHERYL HANSEN MOTION TO EXTEND AUTOMATIC STAY
SS-1 Scott D. Shumaker 7-5-17 [12]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The Motion to Extend Automatic Stay was not set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). Additionally, the motion was not set for hearing on an order shorting time by Local Bankruptcy Rule 9014-1(f)(3). Only 12 days' notice was provided. The motion is dismissed without prejudice.

The court will enter an appropriate minute order.

28. 17-23854-B-13 TIAJUANNA TOLES — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 6-19-17 [10]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The Motion to Extend 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 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 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 February 9, 2017, after Debtor failed to make plan payments (case no.15-29449, dkt. 49). 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 the plan was filed primarily to cure pre-petition arrears owed on Debtor's primary residence, cure pre-petition arrears owed to the homeowner's association, satisfy Employment Development Department debt, and retain Debtor's primary residence. Debtor asserts that his circumstances have changed from the previous bankruptcy case since he has gained employment after losing his job. He has also paid down some bills since the last filing and his car issues have been resolved.

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.

29. 16-26158-B-13 HELEN GUNKEL
JPJ-1 W. Scott de Bie

OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 3
5-18-17 [19]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV II, 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. 3-1 of Cavalry SPV II, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $372.53. 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 November 8, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 15, 2016, 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).

The court will enter an appropriate minute order.

30. 14-30462-B-13 JULIAN SIMENTAL MOTION TO INCUR DEBT
MJD-1 Scott J. Sagaria 6-16-17 [32]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

Debtor's Motion to Incur New Debt to Purchase Real Property for a Primary Residence 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 and authorize the Debtor to incur post-petition debt.

The motion seeks permission to obtain credit for the purpose of purchasing real property. The Debtor has not yet chosen a real property but has been pre-approved for a loan amount of $361,550.00. The pre-approval is through Veterans United Home Loans for a 30-year fixed loan, interest at 5.000%, and principal, interest, taxes, and mortgage insurance payment of $2,480.88. Debtor's rent is currently $1,825.00 but will increase to approximately $2,025.00 per month. Debtor states that his salary has increased and that this should allow for the Debtor to cover the difference in the rent and mortgage payments.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

31. 13-31572-B-13 JOHN/WILMA NORRIS — NOTICE OF DEATH OF A DEBTOR AND MOTION FOR SUBSTITUTION
SDB-3 W. Scott de Bie — 5-25-17 [53]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

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

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

Debtor John Norris gives notice of death of his wife and Co-Debtor Wilma Norris and requests the court substitute John Norris in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of

> death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. The Declaration of John Norris states that the Debtor wishes to continue with the Chapter 13 proceeding and that he can reasonably and timely prosecute actions needed to promote proper administration of the case to conclusion. In acting on behalf of himself and as successor to his deceased spouse, continuity will be maintained in this case to the benefit of all parties and administration of the bankruptcy estate. Debtor holds possession and control of his deceased spouse's assets and obligations since all property was held as community property.

Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

The court will enter an appropriate minute order.

32. 14-25175-B-13 JOHNNIE/KIMBERLY RHYNES — MOTION TO VALUE COLLATERAL OF HOME EXPO FINANCIAL, INC.
SNM-10 Stephen N. Murphy — 6-15-17 [130]

Tentative Ruling: The Motion to Value Collateral of Home Expo Financial Inc. 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 Home Expo Financial Inc. at $0.00.

Debtors seek to value the secured claim of Home Expo Financial Inc. ("Creditor"), successor in interest to Bucks Financial, LLC. *See* Claim No. 14, p. 7. The motion is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 2014 Crawford Court, Fairfield, California ("Property"). Debtors seek to value the Property at a fair market value of $224,000.00 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). Moreover, the court had determined that the Property had a fair market value of $224,000.00 in its order granting Debtors' motion to value the same Property on June 30, 2014. Dkts. 29, 45. The court had valued the second deed of trust claim of Bucks Financial, LLC at $0.00.

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. 14 filed by Home Expo Financial, Inc. is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition stating that it disagrees with Debtors' valuation and requests to appraise the Property. Creditor also requests that the court advise the parties as to the date of valuation. Creditor believes that the proper date for valuation is not the petition date but rather the date that Debtors filed this motion on June 15, 2017.

Discussion

The Creditor has provided no basis for deviating from the petition date as the date to determine valuation. The petition date is the most logical point for determining value in the context of a Chapter 13 lien strip motion. *In re Montiel*, 2017 Bankr. LEXIS 1797, at *8 (Bankr. W.D. Wash. 2017). *See also BAC Home Loans Servicing, LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 902 (9th Cir. BAP 2011). On the petition date, the Creditor's right to prevent modification of its claim depended on two factors: whether the property had equity to support the lien, and whether the claim was secured solely by Debtors' principal residence, 11 U.S.C. § 1322(b)(2). *In re Montiel*, 2017 Bankr. LEXIS 1797, at *11.

When the Debtors' petition was filed on May 16, 2014, Creditor had no equity to support the lien. In fact, Creditor had no interest in the Property until September 2, 2014, when Bucks Financial, LLC assigned the deed of trust to Creditor. This date is after the court had determined on June 30, 2014, that Bucks Financial's second deed of trust had a secured claim of $0.00. Dkts. 29, 45. The court had also determined that the Property was encumbered by a first deed of trust held by Seterus, Inc. with a balance of approximately $265,045.00. Dkt. 29. Thus, the value of the collateral available to the Creditor on its junior deed of trust is $0.00.

The court also finds that the timing of this motion does not create an equitable exception to using the petition date for valuation in this case. *In re Montiel*, 2017 Bankr. LEXIS 1797, at *14.

Since valuation is determined as of the petition date and Creditor had no right to prevent modification of its claim, the court denies Creditor's request to continue the matter so that Creditor can obtain an appraisal. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The claim of Home Expo Financial Inc. secured by a junior deed of trust identified as recording number 200600042574, as against real property commonly known as 2014 Crawford Court, Fairfield, California, 94533, with APN 0170-174-110, is wholly unsecured.

The court will enter an appropriate minute order.

33. 16-20581-B-13 BRODIE STEPHENS
JPJ-3 Peter G. Macaluso

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
5-31-17 [68]

Tentative Ruling: Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 matter will be continued to July 25, 2017, at 1:00 p.m. for the reasons stated below.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Trustee"). Trustee asserts that the case should be converted on grounds that the Debtor failed to surrender to the Trustee all tax refunds up to $9,227.00 as stated in the order confirming plan filed May 11, 2016. Trustee asserts that the Debtor received a refund from the Internal Revenue Service in the amount of $4,215.00 and a refund from the Franchise Tax Board in the amount of $2,475.00 for the 2016 tax year.

According to amended Schedules A/B filed March 15, 2016, the total value of non-exempt property in the estate is approximately $40,464.09. The Trustee asserts that conversion of this case rather than dismissal is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

Response by Debtor

Debtor's spouse (and curiously not the Debtor) asserts in a declaration that the Internal Revenue Service issued a tax refund in the amount of $5,035.22 and that the Franchise Tax Board issued a tax refund of $714.85. Apparently, the amount from the Franchise Tax Board is less than the anticipated amount because an offset was performed from what Debtor previously owed. Debtor states that they paid the total of $5,750.07 to the Trustee on June 12, 2017.

Debtor's spouse's declaration states that two checks from the IRS were received. Debtor is **ORDERED** to file and serve the Trustee with copies of those two checks by 5:00 p.m. on July 21, 2017.

Debtor's spouse's declaration also states that the FTB refunded $714.85. Debtor is **ORDERED** to file and serve the Trustee with evidence of that refund by 5:00 p.m. on July 21, 2017.

This matter is continued to July 25, 2017, at 1:00 p.m.

The court will enter an appropriate minute order.

34. 16-27483-B-13 RICHARD/GRACE HINDES
17-2075 PPR-1
HINDES ET AL V. BANK OF AMERICA, N.A. ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
6-5-17 [8]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

Presently before the court is defendant's motion to dismiss plaintiff's complaint. The court has reviewed the docket and has determined that resolution of the motion to dismiss does not require oral argument. *See* LBR 9014-1(g). For the reasons explained below, the motion to dismiss will be denied as moot.

Background

Plaintiff commenced this adversary proceeding by filing a complaint on May 5, 2017. Plaintiff served the complaint and summons on May 8, 2017.

In lieu of an answer, defendant filed and served a motion to dismiss the complaint on June 5, 2017.

Plaintiff then filed an amended complaint on June 19, 2017.

Plaintiff also filed an opposition to the motion to dismiss on June 23, 2017. The opposition states that any deficiencies in the complaint are fixed by the amended complaint.

Discussion

Amendments to pleadings are governed by Federal Rule of Civil Procedure 15 made applicable by Federal Rule of Bankruptcy Procedure 7015. Rule 15(a) is applicable here. It states as follows:

> (a) Amendments Before Trial.
>
> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
>
> (A) 21 days after serving it, or
>
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a); Fed. R. Bankr. P. 7015.

The complaint is a pleading to which a responsive pleading, *i.e.*, an answer, is required. *See* Fed. R. Civ. P. 7(a); Fed. R. Bankr. P. 7007. Plaintiff filed an amended complaint 14 days after defendant served its motion to dismiss the complaint. The amended complaint is timely filed as a matter of right.

Plaintiff's opposition to the motion to dismiss the complaint states that the amended complaint fixes any deficiencies in the complaint. The court need not make that determination at this juncture. The amended complaint supercedes the complaint and moots the motion to dismiss the complaint. *Ramirez v. County of San Diego*, 806 F.3d 1002, 1008 (9th Cir. 2015). Therefore, the motion to dismiss the complaint will be DENIED AS MOOT.

The court will enter an appropriate minute order.

35. 17-22885-B-13 JANINE KING
MJD-3 Matthew J. DeCaminada

MOTION TO EMPLOY WHITE HOUSE REALTY, INC. AS BROKER(S)
6-16-17 [34]

Final Ruling: No appearance at the July 17, 2017, hearing is required.

The Application by Debtor for Approval of Real Estate Broker (White House Realty, Inc.) for Sale of Real Property 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 conditionally grant the motion to employ.

Debtor seeks to employ real estate broker White House Realty, Inc., pursuant 11 U.S.C. § 327(a). The Debtor argues that White House Realty's appointment and retention is necessary to assist her in establishing the fair market value of real property located at 8639 Nightshade Court, Elk Grove, California ("Property"), and to market and sell the Property for the benefit of the Debtor and all creditors in interest.

Real estate broker Russell White testifies that he has met with Debtor and is willing to market and sell the Property for commissions at the rate of 5% of the total sales amount of the Property. Mr. White testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Local Rule 2014-1 states that to insure public confidence in the integrity of the bankruptcy process, the verified statement that must accompany an Application for Employment of Professional Persons pursuant to Fed. R. Bankr. P. 2014(a) shall, after disclosure of any actual connections, close with the statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party-in- interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee." Applications for Employment which are not accompanied by a verified statement containing such a statement may be denied without prejudice. It does not appear that the application provided by the Debtor includes this language.

Provided that the Debtor include the required language of Local Rule 2014-1 in an amended declaration filed and served by June 20, 2017, and taking into account all of the relevant factors in connection with the employment and compensation of White House Realty, Inc., considering the declaration demonstrating that Mr. White and his firm do

not hold an adverse interest to the Estate and are disinterested persons, the nature and scope of the services to be provided, the court conditionally grants the motion to employ White House Realty, Inc. as real estate broker to the Debtor on the terms and conditions set forth in the Residential Listing Agreement filed as dkt. 37, exh. A.

The court will enter an appropriate minute order.

36. 13-32286-B-13 MARCOS SMITH
WW-3 Mark A. Wolff

OBJECTION TO CLAIM OF VICTOR CORREIA, CLAIM NUMBER 6-1
6-1-17 [80]

Tentative Ruling: The Objection to Claim of Victor Correia, Claim Number 6-1 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 overrule the objection to Claim No. 6-1 of Victor Correia.

Raymond Correa ("Objector") requests that the court disallow the claim of Victor Correia ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of $22,785.53. Objector asserts that the claim was paid through the plan of his prior bankruptcy case (no. 08-26780) and that Creditor received a sum of $20,185.53. Objector believes that a balance of only $4,409.47 is due but requests that the claim be disallowed to the extent is exceeds $12,158.96 and that all the funds in excess of this be paid to the Chapter 13 Trustee.

Responses

Responses were filed by both the Chapter 13 Trustee and Creditor.

Chapter 13 Trustee Jan Johnson asserts that the deadline to file an objection to the Notice of Filed Claims has passed. Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims shall be filed no later than 60 days after service of the Notice of Filed Claims. In this case, more than three years have passed. Pursuant to Local Bankr. R. 3007-1(d)(4), any objection filed after the 60 day period, if sustained, shall not result in any order that the claimant refund amounts paid on account of its claim. The Trustee has already paid Creditor $22,000.00 and opposes the Objector's request to the extent it would require Creditor to refund any of this amount to the Trustee.

Creditor has filed a response reiterating the Trustee's assertion that the deadline to file an objection to the Notice of Flied Claims has expired pursuant to Local Bankr. R. 3007-1(d)(3). Creditor also states that the amount claimed in Claim No. 6-1 is correct and is comprised of $12,158.96 in pre-petition claims and new attorneys fees and costs incurred from this second bankruptcy case, the filing of a second adversary proceeding, and in negotiating a settlement agreement.

Discussion

Local Bankr. R. 3007-1(d)(3) provides that objections to claims shall be filed no later than 60 days after service of the Notice of Filed Claims. Objector did not file an objection until over three years after the Notice of Filed Claims was filed and served. The Objector does not state why it has taken three years to file an objection. In any case, Objector is too late.

Additionally (and alternatively), § 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 (9th Cir. BAP 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 Objector has not presented substantial and factual basis to

overcome the prima facie validity of the proof of claim. The Debtor requests that the court disallow the claim to the extent it exceeds $12,158.96. It is unclear to the court where this amount comes from and no exhibits have been filed to provide any clarification. There is insufficient evidence 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 objection is overruled without prejudice.

The court shall enter an appropriate minute order.

37. 17-24418-B-13 CARLOS/KELLY SMITH
MCN-1

MOTION TO IMPOSE AUTOMATIC STAY
O.S.T.
7-11-17 [11]

This matter is set on an order shortening time and will be determined at the scheduled hearing.