UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 19, 2016 at 1:00 p.m.

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1. 16-20303-B-13 MICHELE REED — CONTINUED MOTION TO CONFIRM PLAN
CA-2 Michael David Croddy — 5-24-16 [29]
Thru #2

CONTINUED TO 8/16/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS.

Final Ruling: No appearance at the July 19, 2016, hearing is required.

2. 16-20303-B-13 MICHELE REED — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Michael David Croddy — 6-16-16 [34]

CONTINUED TO 8/16/16 AT 1:00 P.M. TO PROVIDE THE DEBTOR ADDITIONAL TIME TO RESPOND TO THE TRUSTEE'S OBJECTION TO EXEMPTIONS SINCE THE DEBTOR IS IN EUROPE AND COMMUNICATION IS DIFFICULT AT THIS TIME. THE DEBTOR SHALL FILE A RESPONSE TO THE TRUSTEE'S OBJECTION BY 8/05/16.

Final Ruling: No appearance at the July 19, 2016, hearing is required.

3. 16-23205-B-13 JANET ROBERTS
JPJ-1 Brian L. Coggins

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-22-16 [16]

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

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

First, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Second, Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Chapter 13 Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through a plan with a monthly payment specified at $0.00.

Third, feasibility depends on the granting of a motion to value collateral for Specialized Loan Servicing. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a motion to value collateral pursuant to Local Bankr. R. 3015-1(j).

The plan filed May 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

4. 11-34606-B-13 TALAL SULEIMAN
RAC-3 Richard A. Chan

MOTION TO APPROVE LOAN MODIFICATION
6-15-16 [67]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Motion for Permission to Modify Home Loan 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 not permit the loan modification requested.

Debtor seeks court approval to enter into and finalize a loan modification with Bank of America, N.A. ("Creditor"). Under the loan modification, the Debtor asserts that he has made certain timely payments for the last 6 years and has qualified for incentives. The incentives are applied as reductions to the outstanding amount due on the loan resulting in a new principal balance. The Debtor also asserts that he has completed 60 months of plan payments to the Chapter 13 Trustee.

Although the Debtor has filed the loan modification agreement as Exhibit A, the Debtor's motion does not state with particularity the grounds for relief sought. There is also no evidence showing that Bank of America, N.A. is the creditor. The Debtor does not testify that he borrowed money from, signed a promissory note with, or that a promissory note was assigned or transferred to Bank of America, N.A. In fact, Class 4 of the plan filed June 10, 2011, and confirmed October 10, 2011, lists the creditor with a claim against Debtors' primary residence as Bac Home Loans.

Although the Debtor has submitted a Declaration stating his desire to enter the loan modification, there is no statement of Debtor's ability to pay the higher monthly contractual installment on the modified terms.

The motion is denied without prejudice. The court shall enter an appropriate minute order.

5. 15-28906-B-13 SHELLY CLARK MOTION TO CONFIRM PLAN
SJS-3 Matthew J. DeCaminada 6-6-16 [85]
Thru #6

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Debtor's Motion to Confirm Third Amended 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 third 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 June 6, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

6. 15-28906-B-13 SHELLY CLARK MOTION FOR SANCTIONS FOR
SJS-4 Matthew J. DeCaminada VIOLATION OF THE AUTOMATIC STAY
6-1-16 [78]

Tentative Ruling: Debtor's Motion for Sanctions for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

The Debtor asks the court to award damages against Sutter Health d.b.a. Sutter Roseville Medical Center ("Sutter Roseville") and J&L Teamworks ("J&L") for an automatic stay violation resulting in alleged economic loss and emotional distress. Debtor asserts that after both creditors were notified of Debtor's bankruptcy, Sutter Roseville attempted to collect debt by sending a notice via U.S. Mail and contacting Debtor by telephone and J&L did the same by mailing a collection notice on behalf of Sutter Roseville. The motion seeks (1) $2,000.00 in compensatory damages, (2) $3,000.00 in deterrent sanctions, and (3) $3,500.00 in attorney's fees and costs to prosecute this motion.

The request for judicial notice at Dkt. 100 is granted and, for the reasons explained below, which are the court's findings of fact and conclusions of law made pursuant to Federal Rule of Civil Procedure 52(a) as applicable by Federal Rule of Bankruptcy Procedure 7052 and 9014, the motion will be denied and an order to show cause why the Debtor and her attorneys should not be sanctioned will issue.

The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay

prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[,]" 11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." *Harris v. Johnson (In re Harris)*, 2011 WL 3300716, at *4 (9th Cir. BAP 2011) (citing *Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez)*, 227 B.R. 174, 180 (9th Cir. BAP 1998)). A violation of the automatic stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002). The court finds that the Debtor has failed to prove a wilful violation of the automatic stay by Sutter Roseville or J&L because the Debtor has not met her burden of showing that Sutter Roseville and J&L had knowledge of the bankruptcy case when they contacted her. And absent a willful violation, the court will award no damages.

The debt the Debtor claims was collected in violation of the automatic stay is owed to Sutter Roseville, which assigned that debt to J&L. The Debtor asserts that Sutter Roseville received notice of this case and notice of the Debtor's Chapter 13 plan from the Bankruptcy Noticing Center, which sends certain notices to creditors and other parties in interest in the case. However, a review of the BNC certificates of mailing for the Notice of Commencement and the Chapter 13 Plan shows that both notices were sent to Sutter Medical at P.O. Box 255228, Sacramento, California. This does not appear to be a proper address and is not an address listed for service of process on the Secretary of State website.

More important, Sutter Medical and Sutter Roseville are different entities. Even more troubling, the Debtor's attorney knows they are different entities (especially for noticing purposes) because in a prior case for a different debtor filed by the same attorney, Sutter Medical, Sutter Health, and Sutter Roseville were all listed as separate creditors with different addresses. *See In re Christina Alves*, Case No. 14-29804, Schedule F. Particularly, the address for Sutter Medical differs from the address for Sutter Roseville according to the Schedules filed in that prior case. In contrast, in this case, neither Sutter Roseville nor J&L were listed in the Debtor's petition, included in the roster of creditors, or served the BNC Notices referenced above which were sent to Sutter Medical and not Sutter Roseville or J&L.

Therefore, because the Debtor has failed to carry her burden on an element necessary to establish a wilful violation of the automatic stay, *i.e.*, knowledge of the bankruptcy case and automatic stay, the motion is ordered denied.

Additionally, because there appears to be no basis for the present motion since neither Sutter Roseville nor J&L are listed in the Schedules, matrix, or included on the BNC notices, the Debtor and her attorneys are ordered to show cause why they should not be sanctioned under Federal Rule of Civil Procedure 9011(c)(1)(B) or the court's inherent authority and/or why compensation should not be denied or disgorged under § 330. A hearing on the court's order to show cause will be set for **August 16, 2016 at 1:00 p.m.** and the Debtor and her attorneys shall file a written response by **August 2, 2016.**

The court shall enter an appropriate minute order.

7. 16-24006-B-13 JOHN PUGH MOTION TO EXTEND AUTOMATIC STAY
JGD-1 John G. Downing 7-5-16 [9]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 5, 2015, after Debtor voluntarily moved to dismiss case (case no. 15-22965, Dkt. 55). 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 he voluntarily dismissed his case because he felt he could attempt to resolve his financial difficulties outside of bankruptcy. Debtor states that he was ultimately unsuccessful in resolving these financial difficulties and that the new bankruptcy case was filed primarily to take care of IRS and unsecured debt. However, the court notes that in the Debtor's prior Chapter 13 case a party in interest moved to dismiss the case on the basis that the Debtor misrepresented facts in his petition which he failed to correct when requested to do so by the Trustee. The party in interest also alleged that the Debtor filed the Chapter 13 petition to prevent enforcement of a stipulation to sell real property in a pending state court action. A hearing on that motion was set for August 2, 2015. The Debtor has failed to prove that these circumstances have changed by clear and convincing evidence.

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 denied and the automatic stay is not extended for all purposes and parties.

The court shall enter an appropriate minute order.

8. 14-32007-B-13 JUSTIN ROMAN MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 5-27-16 [34]

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

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

The Trustee objects to confirmation of the plan on the ground that four months would have gone by without a plan payment and that this proves the plan is not feasible. Although the Debtor has not made plan payments since February 26, 2016, and proposes to commence plan payments again in July 2016, the Debtor explained in his declaration that his failure to make plan payments was due to unanticipated medical expenses related to contracting blood disease which infected his leg and thereafter lost his employment and means of income. The Debtor has resumed full-time work on May 2, 2016, and asserts that he is able to resume payments again and that the plan will complete within 60 months. As stated in Debtor's response, the Debtor has proposed monthly payments of $815.00 beginning in July 2016 and for the remainder of the plan. This will be provided for in the order confirming.

Due to the Debtor's unique circumstances, the modified plan is deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

9. 16-24108-B-13 DAVID MARTIN
MOH-1 Michael O'Dowd Hays

MOTION FOR TURNOVER/RETURN OF PROPERTY AND/OR MOTION FOR COMPENSATION FOR MICHAEL O. HAYS, DEBTORS ATTORNEY(S)
7-5-16 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtor's Motion for Turnover/Return of Debtor's Property, Attorneys [sic] Fees & Costs is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion.

Before the court is a motion by debtor David Martin ("Debtor") for turnover of property of the estate and for compensation. The court also construes the motion as one for sanctions under 11 U.S.C. § 362(k)(1) for violation of the automatic stay of 11 U.S.C. § 362(a). Although this motion is filed under Local Bankr. R. 9014-1(f)(2), because of the gravity of the situation the court has determined that further argument will not assist it in its decision. *See* Local Bankr. R. 9014-1(h). What follows are the court's findings of fact and conclusions of law made pursuant to Federal Rule of Civil Procedure 52(a) applicable by Federal Rule of Bankruptcy Procedure 7052 and 9014.

Background

Debtor filed a petition for relief under Chapter 13 of the bankruptcy code on June 24, 2016. Debtor filed the petition after his vehicle, a 1963 Corvette ("Vehicle"), was seized and impounded on or prior to that date. The Vehicle was seized in order to satisfy a pre-petition judgment debt in the amount of $23,411.06 that the Debtor owes to creditor Matthew Lakota ("Mr. Lakota"). The Debtor's Chapter 13 plan provides for payment of Mr. Lakota's claim in full over a five year period.

The Vehicle appears to be in the actual possession of the Butte County Sheriff's Office ("BCSO") for Mr. Lakota's benefit. On June 29, 2016, the Debtor's attorney received a letter from Butte County Deputy Counsel, which was also sent to the BCSO. The letter reflects that Deputy County Counsel understands that the Vehicle is property of Debtor's bankruptcy estate because counsel states in the letter that the BCSO will be instructed to return the Vehicle to the Debtor.

The major problem here appears to be Mr. Lakota. Mr. Lakota was informed of the Debtor's bankruptcy case on June 27, 2016. At that time, he was asked to return the Vehicle to the Debtor. He refused. The motion is not entirely clear, but, another request for return of the Vehicle was made on June 29, 2016, or July 5, 2016. Mr. Lakota refused that request as well. Mr. Lakota has also apparently contacted the BCSO and expressed opposition to the release of the Vehicle causing the BSCO to retain the Vehicle despite contrary instructions from Deputy County Counsel. Insofar as the court can tell, the Vehicle has not been sold and remains with the BCSO.

Discussion

The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, . . . "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3).

The Vehicle is property of the estate and it became property of the estate when the Debtor filed his chapter 13 petition on June 24, 2016. *See* 11 U.S.C. § 541(a); *United States v. Whiting Pools*, 462 U.S. 198 (1983). The Debtor has exclusive authority to

deal with property of the estate. *See* 11 U.S.C. § 1303. The Debtor is also entitled to remain in possession of property of the estate absent an order or plan that provides otherwise. *See* 11 U.S.C. § 1306. More important, the bankruptcy court has exclusive jurisdiction over property of the estate which means it has exclusive federal jurisdiction over the Vehicle. *See* 28 U.S.C. § 1334(e).

An entity in possession of property of the estate at the commencement of a case has an affirmative obligation to turn it over to the estate's representative. *See* 11 U.S.C. § 542(a). A custodian has the same obligation. *See* 11 U.S.C. § 543(a). That means Mr. Lakota and the BCSO (as a custodian) are required - and will - turnover the Vehicle to the Debtor or the Debtor's attorney as directed below.

Additionally, as one of the fundamental principles under the Bankruptcy Code, the automatic stay requires a creditor to actively remedy acts taken in ignorance of the stay. Thus, when a stay violator, such as Mr. Lakota, learns of the bankruptcy case but fails to take affirmative steps to unwind its violative acts he willfully violates the automatic stay. *See Sternberg v. Johnston*, 595 F.3d 937, 944-945 (9th Cir. 2010) (as amended), partially overruled on other grounds by, *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095 (9th Cir. 2015) (en banc); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003); *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002).

Mr. Lakota knew that the Debtor filed bankruptcy as early as June 27, 2016. At that point, he had an affirmative obligation to turn over the Vehicle to the Debtor (or instruct that BCSO to do so) and to do so promptly. Despite at least two requests, Mr. Lakota refused to return the Vehicle to the Debtor. He also contacted the BSCO and expressed opposition to the release of the Vehicle, which has apparently caused the BSCO to retain the Vehicle despite Deputy County Counsel's instructions to the BCSO to return the Vehicle to the Debtor. Thus, not only did Mr. Lakota disregard his obligation to turn over property of the estate to the Debtor as the estate's representative, but, he also acted in complete derogation of his affirmative duty to undo his stay violations causing what might have been a "technical" stay violation to become a wilful violation of § 362(a)(3). *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (holding that the knowing retention of estate property violates the automatic stay); *see also In re Jackson*, 251 B.R. 597, 600-601 (Bankr. D. Utah 2000) (post-petition retention of vehicle seized pre-petition violated stay and citing and collecting cases).

As a result of his actions Mr. Lakota is now subject to sanction by this court under § 362(k)(1), and he will be sanctioned. The BSCO will also be ordered to show cause why it should not be sanctioned. In cases of a willful violation, such as this one, the injured individual shall recover actual damages, including costs and attorney's fees and, in appropriate circumstances, may recover punitive damages. *See* 11 U.S.C. § 362(k)(1); *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 589 (9th Cir. BAP 1995).

Conclusion and Order

Based on the foregoing, the motion is granted and the court orders as follows:

(1) In exercise of its exclusive jurisdiction over the Vehicle the BCSO, Mr. Lakota, and/or any other individual, person, entity, or agency in actual or constructive possession of the Vehicle shall return the Vehicle to the Debtor or the Debtor's attorney within 24 hours of the receipt of this order.

(2) If the Vehicle is not returned to the Debtor or the Debtor's attorney within 24 hours of receipt of this order by any individual, person, entity, or agency in actual or constructive possession of the Vehicle the Debtor may apply to this court *ex parte* for an order to directing the United States Marshals Service to seize the Vehicle from any individual, person, entity, or agency holding, retaining, or in actual or constructive possession of the Vehicle.

(3) If the Vehicle is not returned to the Debtor or the Debtor's attorney within 24 hours of receipt of this order Mr. Lakota will be assessed an additional

$250.00 per day for every day thereafter the Vehicle is not returned.

(4) Mr. Lakota is ordered to pay the Debtor's attorney's fees in the amount of $500.00. At $250.00 per hour, the court finds that the attorney's fees the Debtor's attorney incurred in remedying Mr. Lakota's wilful stay violation are reasonable and the services he provided to the Debtor to remedy the stay violation were necessary.

(5) The Debtor may deduct from any claim or proof of claim filed or asserted in this case by Mr. Lakota the cost of storing and recovering the Vehicle from and after June 24, 2016.

(6) Based on Mr. Lakota's callous disregard for his turnover obligation, the automatic stay, his obligation to undo his wilful stay violation, his interference with the instructions of Deputy County Counsel for the turnover of the Vehicle to the Debtor, and federal bankruptcy law, the court finds that this is an appropriate case for an award of punitive damages. *See Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 228 (9th Cir. 1989). Accordingly, the court awards the Debtor $2,500.00 in punitive damages which Mr. Lakota shall personally pay.

(7) The BCSO is ordered to show cause why it should not be held in contempt for violation of its turnover obligation under § 543 and violation of the automatic stay of § 362(a)(3). A hearing on this court's order to show cause will be held on **August 16, 2016, at 1:00 p.m.** The BCSO shall file a written response to the court's order to show cause by **August 2, 2016.**

(8) Debtor's counsel shall serve a copy of the Civil Minutes and the related Civil Minute Order on Mr. Lakota and the BCSO and file proof of service of the same.

The court shall enter an appropriate minute order.

10. 16-24208-B-13 AMBER CURE MOTION TO EXTEND AUTOMATIC STAY
MMM-1 Mohammad M. Mokarram 7-5-16 [8]

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

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

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 April 13, 2016, after Debtor failed to make plan payments (case no. 15-23706, Dkt. 26). 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 her case was dismissed for failure to make plan payments since there were unanticipated childcare and veterinary expenses. The Debtor alleges that she can fulfill the obligations of a new Chapter 13 plan because she has a new attorney, received a pay increase from $70,000.00 to approximately $82,000.00 per year as indicated on Schedule I, and has accounted for paying 100% of childcare expenses.

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 shall enter an appropriate minute order.

11. 16-20809-B-13 JOSEPH/ANGELA BIASI MOTION TO CONFIRM PLAN
RLC-2 Stephen M. Reynolds 5-24-16 [31]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Motion to Confirm the Chapter 13 Plan Dated May 20, 2016, 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 Debtors have 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 24, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

12. 16-22609-B-13 AISEA/HAISIA INOKE MOTION TO CONFIRM PLAN
MRL-3 Mikalah R. Liviakis 5-28-16 [27]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Motion to Confirm Debtor's [sic] 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 Debtors have 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 28, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

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

STATUS CONFERENCE RE: OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-4-15 [68]

CONTINUED TO 9/13/16 AT 1:00 P.M. SEE DKTS. 88, 95.

Final Ruling: No appearance at the July 19, 2016, hearing is required.

14. 16-21514-B-13 CHERRONE PETERSON — MOTION TO CONFIRM PLAN
PGM-1 — Peter G. Macaluso — 6-7-16 [32]

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed on June 7, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Trustee and a response was filed by the Debtors.

The court's decision is to sustain the Trustee's objection. Amended plan to be filed and set for hearing by July 31, 2016, or the case will be dismissed on the Trustee's ex parte application.

15. 16-20118-B-13 LESTHER GASTELUM AND ALMA SAQUELARES — MOTION TO CONFIRM PLAN
PGM-1 — 5-25-16 [61]
Thru #16 — Peter G. Macaluso

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

16. 16-20118-B-13 LESTHER GASTELUM AND ALMA SAQUELARES — OBJECTION TO CONFIRMATION OF PLAN BY ALLY FINANCIAL
SW-1 — Peter G. Macaluso — 6-9-16 [67]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

Ally Financial having filed a Notice of Withdrawal, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

17. 16-22826-B-13 DEBBIE BARKER — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
EAT-1 Mikalah R. Liviakis — 6-23-16 [18]
Thru #18

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

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

Subsequent to the filing of the Wells Fargo Bank, N.A.'s objection, the Debtor filed an amended plan on June 27, 2016. The confirmation hearing for the amended plan is scheduled for August 23, 2016. The earlier plan filed May 2, 2016, is not confirmed.

The court shall enter an appropriate minute order.

18. 16-22826-B-13 DEBBIE BARKER — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Mikalah R. Liviakis — 6-22-16 [15]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on June 27, 2016. The confirmation hearing for the amended plan is scheduled for August 23, 2016. The earlier plan filed May 2, 2016, is not confirmed.

The court shall enter an appropriate minute order.

19. 16-23027-B-13 JPJ-1 **Thru #21**

ANGELINA KUBRAKOV
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
6-22-16 [24]

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

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

First, the Debtor did not appear at the first duly noticed first meeting of creditors set for June 16, 2016, as required pursuant to 11 U.S.C. § 343. The Debtor must be thoroughly examined under oath prior to confirmation of a plan.

Second, the Debtor has not provided the Chapter 13 Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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

Fourth, the plan payment in the amount of $70.00 does not equal the aggregate of the Trustee's fees and monthly dividend payable on account of the Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $703.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Fifth, the plan does not specify a minimum dividend to Class 2 general unsecured creditors.

Sixth, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h).

The plan filed May 24, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

20. 16-23027-B-13 MJ-1

ANGELINA KUBRAKOV
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A.
6-22-16 [31]

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

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

First, the objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by

the Debtor's residence located at 9618-9620 Knickers Court, Sacramento, California. The creditor has filed a timely proof of claim in which it asserts $34,279.99 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.

Second, objecting creditor is listed in Class 2 with a proposed monthly dividend of $650.00. This section of the plan prohibits the Debtor from modifying the rights of a holder of a claim secured only by a security interest in the Debtor's principal residence. Objecting creditor is secured by the first lien on the Debtor's principal residence and is not subject to valuation pursuant to 11 U.S.C. § 1322(b)(2).

The plan filed May 24, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed. No other relief is granted.

The court shall enter an appropriate minute order.

21.	16-23027-B-13 PPR-1	ANGELINA KUBRAKOV Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC 6-17-16 [20]

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

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

The objecting creditor asserts that it holds a deed of trust secured by the Debtor's residence located at 9595 Harvest View Way, Sacramento, California. However, the Debtor's petition lists her principal residence as 9618-9620 Knickers Court, Sacramento, California. The creditor asserts $79,511.76 in pre-petition arrearages. Although the creditor has not yet filed a proof of claim and states that it will do so prior to the claims bar deadline, the creditor provides the Declaration of Nicole Norsworthy, an individual who reviews the business records maintained by Nationstar Mortgage, LLC, as evidence to support its assertion. The creditor's interest in the real property is listed in the petition but appears nowhere in the plan filed May 24, 2016.

The plan filed May 24, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed. No other relief is granted.

The court shall enter an appropriate minute order.

22. 14-29428-B-13 ROSANNE/STEPHEN AVILA MOTION TO MODIFY PLAN
JPJ-2 Harry D. Roth 5-20-16 [77]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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 Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of 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 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 the trustee to modify a plan after confirmation. The Chapter 13 Trustee has filed evidence in support of confirmation. No opposition to the motion was filed by the Debtors or creditors. The modified plan filed on May 20, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

23. 16-24333-B-13 RYAN BLAKE
MMM-1 Mohammad M. Mokarram
Thru #24

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
7-5-16 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of Santander Consumer USA, Inc. 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 value the secured claim of Santander Consumer USA, Inc. at $5,800.00.

The motion filed by Debtor to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Suzuki SX4 LE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,800.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,900.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $5,800.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate minute order.

24. 16-24333-B-13 RYAN BLAKE
MMM-2 Mohammad M. Mokarram

MOTION TO EXTEND AUTOMATIC STAY
7-5-16 [12]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was

dismissed on June 27, 2016, after Debtor for failure to make plan payments (case no. 15-25772, Dkt. 37). 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 she was unable to make plan payments in the previous case since she had to pay for moving expenses and higher rent at a new apartment. Although the Debtor's new rent will be higher than what she had paid while living with her mom, the Debtor states that she can afford this because she is making an additional $600.00 per month and her plan payments will be less under a 60-month plan opposed to the former 36-month plan. The Debtor states that the present case was filed in order to keep her car.

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 subject to the condition noted below.

The motion is granted and the automatic stay is extended as to Debtor's car lender only, unless terminated by operation of law or further order of this court.

The court shall enter an appropriate minute order.

25. 15-28836-B-13 CHARLES/PAMELA JACKSON MOTION TO MODIFY PLAN
BLG-1 Pauldeep Bains 5-27-16 [24]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on 5/27/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Trustee has filed an opposition and the Debtors have filed a response.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming include the following language resolving the issues raised by the Chapter 13 Trustee: "Section 6.01: Section 2.09 - IRS monthly dividend of $188.95" and "Section 6.01: Section 2.09 - Wells Fargo Dealer Services monthly dividend of $129.18."

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

The court shall enter an appropriate minute order.

26. 14-27938-B-13 TERRI COMBS MOTION TO MODIFY PLAN
MC-2 Muoi Chea 5-24-16 [43]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

27. 16-22839-B-13 CHRISTOPHER/GINA BARNES MOTION TO VALUE COLLATERAL OF
EAS-1 Edward A. Smith WELLS FARGO BANK, N.A.
Thru #29 6-15-16 [19]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Motion to Value Secured Portion of Claim of Wells Fargo Bank, N.A. Successor Institution to Wells Fargo Bank NV, N.A. 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 Wells Fargo Bank, N.A., successor institution to Wells Fargo Bank NV, N.A., at $0.00.

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor"), successor institution to Wells Fargo Bank NV, N.A., is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8609 Meandering Way, Antelope, California ("Property"). Debtors seek to value the Property at a fair market value of $274,577.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim

has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $315,207.95. Creditor's second deed of trust secures a claim with a balance of approximately $51,929.78. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court shall enter an appropriate minute order.

28. 16-22839-B-13 EAT-1 — CHRISTOPHER/GINA BARNES, Edward A. Smith — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-23-16 [27]

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

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

The objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $44,097.90 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed May 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

29. 16-22839-B-13 JPJ-1 — CHRISTOPHER/GINA BARNES, Edward A. Smith — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-22-16 [24]

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

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

First, feasibility depends on the granting of a motion to value collateral for Wells Fargo Bank. That motion was heard and granted at Item #27.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors have not rebutted the presumption created by Form 22C as to the amount they are required to pay to unsecured creditors. Schedule I filed May 14, 2016, shows Debtor Christopher Barnes' income as $4,853.33 and not $4,114.17 as stated on Form 122C-1. The Debtor testified at the meeting of creditors held on June 16, 2016, that the higher income as stated on Schedule I would continue throughout the life of the plan. Additionally, Form 122C-2 includes improper expenses at lines 9 and 34 for the second deed of trust held by Wells Fargo Bank NV, N.A. The second deed of trust is wholly unsecured debt and such debts do not qualify as deductions and must be excluded from Form 22C. *Thissen v. Johnson*, 406 B.R. 888, 894 (E.D. Cal. 2009). Using the Debtor's income stated on Schedule I and removing the improper deduction, the Debtors' correct monthly disposable income is $583.37 and the Debtors' must pay no less than $35,002.20 to general unsecured creditors. The plan pays only $25,049.00 to general unsecured creditors.

The plan filed May 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

30. 16-22950-B-13 AP-1 **Thru #31**

JOYCELYN/FRANCISCUS VAN HOOF
Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
6-23-16 [15]

Tentative Ruling: The court issues no tentative ruling.

The 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). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

31. 16-22950-B-13 JPJ-1

JOYCELYN/FRANCISCUS VAN HOOF
Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-22-16 [12]

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

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

The Debtors have not filed an amended Schedule I to disclose income received for rental property located in Cleveland, Ohio as requested by the Chapter 13 Trustee at the meeting of creditors held on June 16, 2016. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The Debtors have filed an amended Form 122C-1 on July 12, 2016, to list income that was previously not accounted for.

Because the Debtors have not filed an amended Schedule I, the plan filed May 5, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

32.	16-23050-B-13 CA-1	DENNIS LOPEZ AND VICTORIA MATTOCKS Michael David Croddy	MOTION FOR COMPENSATION FOR MICHAEL D. CRODDY, DEBTORS' ATTORNEY 6-28-16 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Compensation By Michael Croddy as Debtors' Attorney (Opting Out of the Guidelines) (First Interim Application for 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 the motion for compensation.

FEES AND COSTS REQUESTED

Michael Croddy ("Applicant"), the attorney to Chapter 13 Debtors Dennis Lopez and Victoria Mattocks ("Clients"), makes a request for the allowance of additionally compensation. After application of the $1,000.00 retainer and the $310.00 paid to counsel for the filing fee, a total of $3,237.50 in additional compensation is sought by this motion. The Clients have opted out of the Guidelines (Dkt. 1). The period for which the fees are requested is for April 1, 2016, through July 19, 2016.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 15, Exh. C.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Clients and bankruptcy estate and reasonable.

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

Application of Retainer	$1,000.00
Costs and Expenses	$ 310.00
Additional Fees	$3,237.50

The court shall enter an appropriate minute order.

33. 13-22852-B-13 DAVID/YOLANDA BENSON MOTION TO APPROVE LOAN
PLC-10 Peter L. Cianchetta MODIFICATION
6-13-16 [124]

Final Ruling: No appearance at the July 15, 2016, hearing is required.

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

The court's decision is to not permit the loan modification requested.

Debtors seek court approval to incur post-petition credit with Wells Fargo Bank, N.A. ("Creditor"). The Debtors state in their declaration that the claim is provided for in Class 1 of their plan. However, a review of the plan filed March 31, 2014, and confirmed August 22, 2014, lists the claim in Class 3, which is for all secured claims satisfied by the surrender of collateral. The Debtors incorrectly include as an exhibit a plan filed March 1, 2013, that was never confirmed. It does not appear that the plan filed March 31, 2014, would accommodate a modification of a loan on surrendered property. Nor is it clear how the Trustee can even pay on the modification.

This post-petition financing is not consistent with the Chapter 13 plan in this case. The motion does not comply with the provisions of 11 U.S.C. § 364(d) and is denied without prejudice.

The court shall enter an appropriate minute order.

34. 11-25158-B-13 JIMMIE/BRENDA WOOTEN
PLC-6 Peter L. Cianchetta

MOTION TO APPROVE LOAN MODIFICATION
6-21-16 [89]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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

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

Debtors seek court approval to incur post-petition credit. Wilmington Trust Company ("Creditor"), serviced by Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,683.00 a month to $1,026.30 a month. The Debtor has been making trial period payments and has been offered the loan modification to modify the current deed of trust on Debtors' real property. Under the new terms of the modified plan, the principal amount will be $198,286.03, interest rate will be 3.375%, and the term will be 480 months.

The motion is supported by the Declaration of Jimmie Wooten and Brenda Wooten. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms since it is a reduction from the Debtors' current monthly mortgage payments.

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

The court shall enter an appropriate minute order.

35. 16-20360-B-13 JPJ-1 — PEDRO/CATALINA ZAMBRANO — Thomas O. Gillis — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 6-8-16 [45]

Tentative Ruling: This matter was continued from July 5, 2016, to allow the Debtors to appear at the continued § 341 meeting set for July 7, 2016. The Trustee's Objection to Confirmation of the 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). A written reply has been filed to the objection.

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

The Debtors appeared at the continued meeting of creditors set for July 7, 2016. Additionally, the Debtors assert that they have provided the Chapter 13 Trustee with evidence of payment advices within the 60-day period prior to the filing of the petition and with copies of an income tax return for the most recent tax year a return was filed.

The plan filed May 2, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court shall enter an appropriate minute order.

36. 11-44963-B-13 JOSEPH PAEZ MOTION TO MODIFY PLAN
JLK-1 James L. Keenan 5-24-16 [35]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

37.	12-30166-B-13 PGM-3	ALEXANDER MILLER Peter G. Macaluso	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY 6-10-16 [66]

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

38. 16-23168-B-13 OZNIESHA WILLIAMS
JPJ-1 Eric W. Vandermey

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-22-16 [13]

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

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

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

The plan filed May 16, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

39. 11-48070-B-13 DOUGLAS/TANA TOLSON MOTION TO MODIFY PLAN
RLC-2 Stephen M. Reynolds 5-31-16 [66]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated May 23, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, feasibility depends on the Debtors obtaining a loan modification with GMAC/Ocwen. There is no evidence that the lender has consented to or is considering a loan modification.

Second, the previously confirmed plan called for GMAC to be paid in Class 1 and IRS in Class 2. The plan filed May 31, 2016, does not provide for GMAC's claim and a monthly dividend to be paid to the IRS's claim.

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

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

The court shall enter an appropriate minute order.

40. 15-24470-B-13 DONNA VANDERHORST
RJ-11 Richard L. Jare

MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTOR'S ATTORNEY
6-29-16 [154]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtor's Attorney's Motion for Final Application for Allowance of Fees in Chapter 13 Case ($3,500.00) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for compensation.

Richard Jare ("Applicant"), attorney to Chapter 13 Debtor Donna Vanderhorst ("Client"), requests that the Chapter 13 Trustee disburse $2,831.00 in fees since Applicant agreed to fees of $3,500.00 and has been paid $679.00 by the Debtor. Applicant also states that he had elected to opt-in the "no look fee." The fees and costs that the Applicant agreed to receive was not the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time the petition was filed. This case commenced on June 1, 2015, and was entitled to a "no look fee" of $4,000.00.

The Applicant has performed 34.1 hours of service, which equates to $8,525.00 at $250.00 per hour. However, the Applicant had agreed to accept $3,500.00, which is allowed less the $679.00 already paid to the Applicant.

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

Fees	$2,831.00
Costs and Expenses	$ 0.00

The court shall enter an appropriate minute order.

41. 16-21071-B-13 ROBIN MCMILLIAN
RJM-1 Rick Morin

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
6-10-16 [18]

Tentative Ruling: The Motion for Order Imposing Sanctions on Mountain Lion Acquisition Inc for Violations of 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 in part and deny in part the motion for sanctions.

Before the court is a motion by debtor Robin Lynn McMillian ("Debtor") for an order imposing sanctions against Mountain Lion Acquisitions, Inc. ("MLA") for MLA's violation of the automatic stay of 11 U.S.C. § 362. The Debtor maintains that the failure to dismiss a post-petition state court collection action that MLA filed to collect a pre-petition debt violates the automatic stay. MLA opposes the motion stating it is not obligated to dismiss its state court collection action, that the state court collection action is stayed during the pendency of the Debtor's Chapter 13 case, it will only prosecute the state court collection action if the Debtor's Chapter 13 case is dismissed, and it did not violate the stay.

The court has reviewed the motion and its related declarations and exhibits. The court has also reviewed MLA's opposition, which is not supported by any declaration or affidavit. The court's findings of fact and conclusions of law made pursuant to Federal Rule of Civil Procedure 52(a) (applicable by Federal Rule of Bankruptcy Procedure 7052 and 9014) are set forth below.

Facts

The Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on February 25, 2016. The Debtor did not list MLA in the Schedules filed with her petition. In particular, MLA was not listed in Schedule F.

A month after the petition was filed, on March 24, 2016, MLA filed a complaint in Sacramento County Superior Court that named the Debtor as a defendant in a collection action. The debt identified in the complaint filed in the state court collection action is a pre-petition debt. MLA served the Debtor with the complaint and a summons at her place of employment on April 27, 2016.

On April 27, 2016, the Debtor's attorney sent MLA a letter, by certified mail with a return receipt requested. The letter notified MLA and its attorney of the Debtor's bankruptcy filing and requested that MLA dismiss the state court collection action by May 6, 2016. The signed certified receipt is stamped May 2, 2016, and it was returned to the Debtor's attorney on May 5, 2016. MLA received additional notice of the Debtor's bankruptcy case on or after May 9, 2016, when the Debtor filed and served an amended Schedule F that listed MLA as a creditor.

The state court collection action was not dismissed by May 6, 2016. In fact, as of the date of the hearing on the Debtor's motion, July 19, 2016, it appears the state court collection action remains pending.

Discussion

The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[,]"

11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

MLA violated the automatic stay when it filed a post-petition action against the Debtor to collect a pre-petition debt and also when it served the complaint and summons on the Debtor. Because MLA was not initially aware of the Debtor's bankruptcy case when it took those actions, its initial stay violations were not wilful and were more in the nature of so-called "technical" violations. They are, however, void. *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009); *see also Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081-82 (9th Cir. 2000) (en banc). And for voidness purposes, it makes no difference that MLA was unaware of the automatic stay when it took the actions that violated the stay. *Carter v. Barber (In re Carter)*, 2016 WL 1704719 at *4 (9th Cir. BAP 2016) (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1188 (9th Cir. 2003)).

When a stay violator knows of the bankruptcy case but fails to take affirmative steps to unwind its violative acts or proceedings he or she willfully violates the automatic stay. *See Sternberg v. Johnston*, 595 F.3d 937, 944-945 (9th Cir. 2010) (as amended), partially overruled on other grounds by, *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095 (9th Cir. 2015) (en banc); *Dyer*, 322 F.3d at 1192; *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002); *Johnson v. Parker (In re Johnson)*, 321 B.R. 262, 283 (D. Ariz. 2005) (citation omitted). Here, MLA was aware of the Debtor's bankruptcy case by at least May 5, 2016, which means that on an after that date MLA had an affirmative obligation to discontinue and undo its stay violations. Since MLA cannot prosecute a void action even if the Debtor's chapter 13 case is dismissed, undoing the stay violation in this case required MLA to dismiss the state court collection action. Indeed, as the Ninth Circuit explained in *Eskanos*:

> The maintenance of an active collection action alone adequately satisfies the statutory prohibition against 'continuation' of judicial actions. Consistent with the plain and unambiguous meaning of the statute, and consonant with Congressional intent, we hold that § 362(a)(1) imposes an affirmative duty to discontinue post-petition collection actions.

Eskanos, 309 F.3d at 1215.

The Debtor asked MLA to dismiss the state court collection by May 6, 2016. MLA failed to comply and, in fact, as late as the filing of its opposition still maintains that it need not comply with that request. It also (wrongly) states in its opposition that "there is no support for the contention that the state court case must be dismissed[.]" In any event, knowing that the Debtor filed bankruptcy, MLA's refusal to take steps to undo its violations of the automatic stay by dismissing the state court collection action turned what initially were "technical" stay violations into wilful stay violations on or around May 5, 2016. *See In re Taylor*, 190 B.R. 459, 461 (Bankr. S.D. Fla. 1995) (technical violation of obtaining judgment post-petition not knowing of bankruptcy case became wilful violation when creditor refused to vacate judgment after learning of bankruptcy case).

In cases of a willful violation, such as this one, the injured individual shall recover actual damages, including costs and attorney's fees. *See* 11 U.S.C. § 362(k)(1); *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 589 (9th Cir. BAP 1995). Therefore, the court will award the Debtor the following as her actual damages:

(1) Attorney's fees in the amount of $1,800.00. Although the Debtor did not submit billing statements, the court concludes that the fees for the services itemized in her attorney's declaration submitted with the motion are reasonable, *i.e.*, six hours at $300 per hour. Given MLA's refusal to comply with its obligation to undo its stay violations, the court also concludes those services were necessary to remedy MLA's wilful violations of the automatic stay.

(2) *Dawson v. Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139 (9th Cir. 2004), permits the court to award limited emotional distress damages without medical evidence in circumstances that make it obvious a reasonable person would suffer emotional harm. *Id.* at 1150. The court concludes that it is reasonable to expect that a debtor several months into a bankruptcy case would suffer some emotional distress when a creditor threatens continued prosecution of a void action to collect a debt subject to payment in a pending bankruptcy case. Additionally, if for some reason the Debtor determines that chapter 13 relief is no longer necessary or she elects to no longer remain a chapter 13 debtor, MLA's threat to continue the void state court collection action upon dismissal unduly interferes with the Debtor's right to dismiss her case under § 1307(b). Therefore, the court will award the Debtor $350 in emotional distress damages.

(3) The Debtor will be awarded an additional $100.00 per day for every court day after July 21, 2016, the state court collection action is not dismissed and remains pending.

The Debtor also requests punitive damages. An individual injured by any willful violation of a stay may, in addition to compensatory damages, be awarded punitive damages under § 362(k)(1). Although 362(k)(1) permits the recovery of such damages "in appropriate circumstances," the Ninth Circuit has cautioned that punitive damages are only appropriate if there has been some showing of reckless or callous disregard for the law or rights of others. *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 228 (9th Cir. 1989). The bankruptcy court has considerable discretion in granting or denying punitive damages under 362(k). *Id.*

The Debtor has submitted no evidence that MLA routinely engages in the type of conduct in which it engaged in this case. There is also is no evidence that this is a repeat occurrence. And other than its refusal to dismiss the state court collection action, there is no evidence MLA actively or affirmatively continued to prosecute that action against the Debtor. Therefore, the Debtor's request for punitive damages in the amount of $1,500.00 will be denied.

Conclusion and Order

Based on the foregoing, it is ordered that the state court collection action that MLA filed against the Debtor in the Sacramento County Superior Court on March 24, 2016, and the service of the complaint filed in that action with summons on the Debtor on April 27, 2016, are void.

It is further ordered that the Debtor's motion is granted in part and denied in part;

(1) Granted in that the Debtor is awarded attorney's fees in the amount of $1,800.00 as actual damages;

(2) Granted in that the Debtor is awarded emotional distress damages in the amount of $350.00 as actual damages;

(3) Granted in that Debtor shall be awarded additional $100.00 per day for every court day after July 21, 2016, the state court collection action is not dismissed;

(4) Denied with prejudice as to the Debtor's request for punitive damages.

The court shall enter an appropriate minute order.

42. 14-22173-B-13 YOLANDA SWARTOUT MOTION FOR STAY PENDING APPEAL
NBC-5 Eamonn Foster 7-5-16 [108]

DEBTOR DISMISSED: 05/13/2016

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The court has reviewed the motion for stay pending appeal filed by Eamonn Foster on behalf of debtor Yolanda Christine Swartout and has determined that oral argument will not assist it in the resolution of the motion. *See* Local Bankr. R. 9014-1(h). The court will issue a final ruling in a memorandum decision on July 19, 2016. The hearing on the motion set for July 19, 2016, at 1:00 p.m. is vacated and no appearance is necessary.

43. 16-22573-B-13 DAVID CIERELY
JPJ-1 Steele Lanphier

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-16 [27]

Tentative Ruling: This matter was continued from July 5, 2016, to allow the Debtor to appear at the continued § 341 meeting set for July 7, 2016. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss 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 Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, although the Debtor's attorney appeared, the Debtor failed to appear at the continued meeting of creditors set for July 7, 2016.

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

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,533.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,533.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the proposed plan does not specify a cure of the post-petition arrearage owed to Freedom Mortgage Corporation including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee therefore cannot fully comply with § 2.08(b) of the plan.

The plan filed May 6, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

44. 14-25175-B-13 JOHNNIE/KIMBERLY RHYNES — MOTION FOR COMPENSATION FOR
SNM-7 Stephen N. Murphy — STEPHEN N. MURPHY, DEBTORS' ATTORNEY
6-14-16 [91]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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

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

Stephen Murphy ("Applicant"), the attorney to Chapter 13 Debtors Johnnie Rynes and Kimberly Rhynes ("Clients"), seeks additional compensation of $1,000.00 for services related to filing a motion to vacate order dismissing case and a motion to modify plan after confirmation requiring amending Schedule I and J.

However, the motion provides no clarification for why Applicant seeks $600.00 for the motion to vacate dismissal and $400.00 for the motion to modify plan. The exhibits submitted provide no clarification. Time entries on Exhibit 1 filed in support of the motion do not correspond with the amount requested and there is no identification of "NCM" as a billing individual. Applicant has failed to demonstrate reasonableness of fees requested. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989); *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012). The declaration of the Clients merely states that they agree to pay Applicant $1,000.00 in additional fees.

45. 11-47082-B-13 RONALD/DIANE TOWNSEND — MOTION TO SELL AND/OR MOTION TO PURCHASE REAL PROPERTY
PGM-1 Peter G. Macaluso — 6-16-16 [37]

Tentative Ruling: The Motion to Sell Real Property and Purchase Real Property 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 defaults of the non-responding parties are entered.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 12736 Sugarloaf Court, Loma Rica, California ("Property").

The proposed purchaser of the property Chad Baumann agreed to purchase the Property for $375,000.00. The Debtors anticipate receiving approximately $142,522.48 from the sale of the property, which they intend to put as a down payment on the purchase of real property located in Wellington, Nevada. Debtors state that while the property has increased in value, this increase will not be available to general unsecured creditors since the funds will be used toward other real property and covered under the homestead exemption. The Debtors assert that they will continue to make plan payment through the remaining 5 months.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall enter an appropriate minute order.

46. 16-20587-B-13 TERRY ARNOLD
JPJ-2 Scott D. Hughes

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
6-20-16 [48]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alterative Dismiss Case 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 convert this Chapter 13 case to a Chapter 7.

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

First, the Debtor has failed to prosecute this case, causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). A plan was heard and denied on May 24, 2016, and the Debtor has not taken further action to confirm a plan.

Second, Debtor is $8,700.00 delinquent in plan payments, which represents approximately 2 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, according to Schedules A, B, and C of the petition filed February 10, 2016, the total value of non-exempt equity in the estate is $114,084.61, not yet including the accounting of Chapter 7 Trustee fees estimated. Conversion to a Chapter 7 is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1305(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C.§ 1307(c) since the Debtor has failed to prosecute this case, is delinquent in plan payments, and there is non-exempt equity in the estate for the benefit of creditors. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate minute order.

47. 16-23189-B-13 ANTHONY DAY
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-22-16 [15]

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

48. 16-22090-B-13 JOSHUA/MARILYN JOHNSON
CYB-2 Candace Y. Brooks
Thru #49

MOTION TO APPROVE LOAN MODIFICATION
7-1-16 [45]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Order Allowing Debtors to Modify Existing Mortgage Loan 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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Select Portfolio Servicing, Inc. ("Creditor"), servicer of Deutsche Bank National Trust Company in trust for registered Holder of Long Beam Mortgage Loan Trust 2006-5, Asset Backed Certificates, Series 2006-5, whose claim the plan provides for in Class 1 and 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,191.34 a month to $1,187.19 a month. The new principal balance on the mortgage loan with Creditor will be $363,310.50, which includes all amounts and arrearages that are past due, excluding unpaid late charges, less any amounts paid to the Creditor but not previously credited to Debtors' loan. The interest bearing principal balance is $212,650.00 with an interest rate of 2.80%. The deferred principal balance is $150,560.50 and will be treated as non-interest bearing principal forbearance. If the Debtors do not meet the terms of their loan modification, they will own a balloon payment of $150,560.50 on or before May 1, 2046.

The motion is supported by the Declaration of Joshua Johnson and Marilyn Johnson. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms since it is a reduction from the Debtors' current monthly mortgage payments.

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

The court shall enter an appropriate minute order.

49. 16-22090-B-13 JOSHUA/MARILYN JOHNSON
JPJ-1 Candace Y. Brooks

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-8-16 [42]

Tentative Ruling: This matter was continued from July 5, 2016, to be heard in conjunction with the motion to approve loan modification at Item #48. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and

confirm the plan.

Feasibility depends on the Debtors obtaining a permanent loan modification with Select Portfolio Servicing, Inc. for the first deed of trust on real property located at 7645 Clement Circle, Sacramento, California. That matter was granted at Item #48.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed April 1, 2016, is confirmed.

The court shall enter an appropriate minute order.

50. 11-29591-B-13 BRIAN SAECHAO
16-2030
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL
Thru #51

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

51. 11-29591-B-13 BRIAN SAECHAO
16-2030 TRF-1
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

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

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Notice of Motion and Defendant's Federal National Mortgage Association and Seterus, Inc.'s Motion to Dismiss Claims Two, Four, and Five of Plaintiff's Adversary Complaint 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.

Presently before the court is motion to dismiss filed by defendants Federal National Mortgage Association ("Fannie Mae") and Seterus, Inc. ("Seterus"). Defendants move to dismiss the second, fourth, and fifth claims for relief in the complaint filed by plaintiff Brian Kao Saechao.[1] Plaintiff opposes defendants' motion to dismiss. Defendants have replied to plaintiff's opposition.

A hearing was held on June 7, 2016. Appearances were noted on the record. The hearing was continued to July 19, 2016, for purposes of a written decision. This order vacates the continued hearing set for July 19, 2016.

The court has carefully reviewed the motion, opposition, and reply. The court also heard and has considered the statements and arguments of counsel made on the record in open court. The court takes judicial notice of the docket in this adversary proceeding, in the related adversary proceeding between the parties filed in this court as Adv. No. 13-02368, and in the plaintiff's underlying chapter 13 case. To the extent necessary the court takes judicial notice of the Home Affordable Modification Agreement dated November 3, 2010 ("Loan Modification").

The court's decision is to grant in part and deny in part the motion to dismiss.

Defendants' Request for Judicial Notice

Defendants ask the court to take judicial notice of the Loan Modification pursuant to Federal Rule of Evidence 201. Federal Rule of Evidence 201 permits the court to "judicially notice a fact that is not subject to a reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b).

Plaintiff objects to judicial notice of the Loan Modification. Plaintiff maintains defendants have not authenticated the document, the document is outside the scope of the complaint, and considering the document will require the court to convert defendants' motion to dismiss to one for summary judgment. Plaintiff's objections are

[1] Plaintiff is also the debtor in the underlying Chapter 13 case.

overruled. To the extent necessary, the court will take judicial notice of the Loan Modification.

As a general rule, matters beyond the pleadings are not considered in ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (applicable by Federal Rule of Bankruptcy Procedure 7012(b)). *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Rule 12(d) states that "[i]f on a motion under Rule 12(b)(6) . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d).

There is an exception to the requirement that consideration of extrinsic evidence converts a Rule 12(b)(6) motion. *Lee*, 250 F.3d at 688. A court "may consider material which is properly submitted as part of the complaint on a motion to dismiss without converting the motion to dismiss into a motion for summary judgment." *Id.* at 688. Documents attached to the complaint are not "outside" the complaint. *Id.*; *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990). To be sure, Federal Rule of Civil Procedure 10(c) (applicable by Federal Rule of Bankruptcy Procedure 7010) states that "[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." Fed. R. Civ. P. 10(c).

Although the Loan Modification is not physically attached to the complaint it "amend[s] and supplement[s]" and "automatically . . . modif[ies]" the note and deed of trust which are attached to the complaint as Exhibit G. That makes the Loan Modification an integral and omitted part of the note and deed of trust. When a partial document is attached to a complaint, the defendant may attach the remainder of the document to a motion to dismiss without converting the motion to dismiss to one for summary judgment. *188 LLC v. Trinity Indus., Inc.*, 300 F.3d 730, 735 (7th Cir. 2002)(district court did not err when it considered document attached to defendant's motion to dismiss that was omitted part of contract attached to complaint; document submitted by defendant was not outside the pleadings and did not require the court to convert motion to dismiss); *see also Armstrong World Indus., Inc. v. Robert Levin Carpet Co.*, 1999 WL 387329 at *1 n.1 (E.D. Pa. 1999) (considering missing pages to a document on a motion to dismiss).

Inasmuch as the Loan Modification is an integral and omitted part of the note and deed of trust, the court may consider it in the same manner and to the same extent as if were attached. And while judicial notice may be unnecessary, to the extent judicial notice is necessary, the court grants defendants' request and will take judicial notice of the Loan Modification.

Background

Plaintiff is the owner of real property located at 9716 Palazzo Court, Elk Grove, California ("Property"). On or about September 19, 2005, plaintiff received a loan in the amount of $357,000.00. The loan is evidenced by a note and secured by a deed of trust recorded against the Property. As noted above, the note and deed of trust are attached as Exhibit G to the complaint.

Plaintiff executed the Loan Modification in 2010. The Loan Modification states that it "amend[s] and supplement[s]" and "automatically . . . modifie[s]" the note and deed of trust. It also establishes a new principal balance of $357,417.44 due under the note and deed of trust. And it provides for a deferral of $34,861.00 of the new principal balance. Interest does not accrue and payments are not due on the deferred principal until the earliest of one of three events not at issue.

Plaintiff filed his petition for Chapter 13 relief in 2011. In 2013, plaintiff sued defendants in a prior adversary proceeding over matters related to his loan. The parties resolved that adversary proceeding with a court-approved settlement agreement. This adversary proceeding arises out of the settlement agreement between the parties that the court approved in the prior adversary proceeding.

Plaintiff initiated this adversary proceeding after defendants billed his loan balance at $322,831.91 and reported a nearly identical amount to credit bureaus as the unpaid loan balance. Plaintiff maintains defendants payment demand and report are improper

and inaccurate because the parties' settlement agreement approved in the prior adversary proceeding states that "the current principal balance of the loan between [plaintiff and defendant] is $298,933.98, . . . and there are no . . . other amounts due and owing as of the Effective Date [of the settlement agreement]." In other words, plaintiff maintains that defendants billed and reported a loan balance different - and greater - than the loan balance established by the settlement agreement.

The complaint in this adversary proceeding alleges five claims for relief: (1) breach of contract; (2) violation of the California Consumer Credit Reporting Agencies Act ("CCCRAA"); (3) unlawful business acts and practices; (4) violation of the California Rosenthal Fair Debt Collection Practices Act ("RFDCPA"); and (5) negligence. Defendants move to dismiss the second, fourth, and fifth claims for relief. Defendants assert the second claim for relief fails because the settlement agreement limits their liability for credit reporting violations under the CCCRAA and, in any event, the loan balance billed and reported is accurate. Defendants assert the fourth claim for relief fails because residential mortgage loans are not "consumer debt" and they are not "debt collectors" under the RFDCPA. Defendants assert the fifth claim for relief fails because as lenders they owe plaintiff no duty of care.

Legal Standard

To avoid dismissal for failure to state a claim, a complaint must contain factual allegations sufficient to "raise a right of relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Courts will not assume that a plaintiff can prove facts beyond those alleged in the complaint. *See Assoc. Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983); *Jack Russell Terrier Network of N'. Cal. v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1035 (9th Cir. 2005). Moreover, courts will not accept as true unsupported conclusions and unwarranted inferences, couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679 (2009). Rather, under Rule 8(a), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 678 (Quotation and internal quotation marks omitted).

In order to be "facially plausible" facts, as pled, must allow the court "to draw the-reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quotation omitted). This requires "more than a sheer possibility that a defendant has acted unlawfully," and more than an assertion of facts that are "merely consistent with" a defendant's liability. *Id.* (quotation omitted). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Id.* (quotation and internal quotation marks omitted). "Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement." *Id.* (quotation and internal quotation marks omitted).

Discussion

A. Second Claim for Relief

The second claim for relief alleges that defendants violated the CCCRAA.[2] Section 1785.25(a) of the CCCRAA states as follows:

> A person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate.

Cal. Civ. Code § 1785.25(a).

[2]Plaintiff consents to the dismissal of the second claim for relief as to Fannie Mae. Therefore, as to Fannie Mae, the second claim for relief will be dismissed. The court considers the claim as alleged to be one alleged only against Seterus.

Seterus offers two reasons why the second claim for relief should be dismissed: (1) the settlement agreement limits its liability for CCCRAA violations; and (2) the loan balance it billed plaintiff and reported to the credit bureaus is accurate because it includes deferred principal due under the Loan Modification. Neither argument is persuasive.

Seterus' first argument is based on ¶ 5 of the settlement agreement. Paragraph 5 limits Seterus' liability for a credit bureau's report of information its receives from Seterus, *i.e.*, what a credit bureau does with information it receives from Seterus after it receives the information from Seterus. Paragraph 5 does not limit Seterus' liability for Seterus' initial report of information to the credit bureau. The second claim for relief concerns the latter. Inasmuch as ¶ 23 of the complaint alleges that "[Seterus] is reporting derogatory information about Plaintiff to one or more consumer reporting agencies (credit bureaus), Exhibits D, E and F, asserting that the Plaintiff owes more money than the settlement agreement between the parties states," the second claim for relief sufficiently alleges a plausible CCCRAA claim that is outside the scope of any limitation on Seterus' liability and within the context of Cal. Civ. Code § 1785.25(a).

Paragraph 5 of the settlement agreement also does not limit Seterus' liability for *future* CCCRAA violations. A limitation on *future* liability is contrary to the public policy of California. *See* Cal. Civ. Code § 1668. Such a reading would also conflict with ¶ 7 of the settlement agreement which limits plaintiff's release of claims against defendants to "all past and present claims . . . arising from the origination or servicing of the Note secured by the Deed of Trust[.]"

As to Seterus' second argument, the accuracy of the loan balance is a factual question that cannot be resolved on a motion to dismiss. For purposes of defendants' motion to dismiss the court must accept as true that, even if the loan balance that Seterus billed and reported includes deferred principal, Seterus still billed and reported a loan balance that conflicts with - and is greater than - the loan balance established by and shown on the face of the settlement agreement. Taking those allegations as true, the court concludes that the second claim for relief states a plausible claim for relief against Seterus under the CCCRAA. Therefore, as to Seterus, the motion to dismiss the second claim for relief will be denied.

B. Fourth Claim for Relief

The fourth claim for relief alleges a claim under the RFDCPA. Defendants move to dismiss the fourth claim for relief on the basis that the debt created by the note and deed of trust is not "consumer debt" and they are not "debt collectors" under the RFDCPA. The court is aware of decisions which hold that residential mortgage loans are not debt within the meaning of the RFDCPA. Defendants cite two: *Castaneda v. Saxon Mortg. Services, Inc.*, 687 F. Supp. 2d 1191, 1197 (E.D. Cal. 2009) and *Pittman v. Barclays Capital Real Estate, Inc.*, 2009 WL 1108889 at *3 (S.D. Cal. 2009). There are others. *See Sipe v. Countrywide Bank*, 2010 WL 22773253 (E.D. Cal. 2010) (collecting cases and noting disagreement over whether mortgage debt is a consumer debt within meaning of the RFDCPA).

Notably, the cases defendants cite and those found by the court pre-date published opinions by Chief Judge Sargis in *In re Ganas*, 513 B.R. 394 (Bankr. E.D. Cal. 2014) and *In re Landry*, 493 B.R. 541 (Bankr. E.D. Cal. 2013). After conducting an exhaustive analysis of the RFDCPA, its legislative history, and cases interpreting its provisions, the court in *Ganas* and *Landry* concluded that mortgage loans are not excluded from the definition of "consumer debt" and the owners of such secured debt and their servicers are "debt collectors" under the RFDCPA. In both cases the court noted that the only statutory exemption from the RFDCPA is found in California Civil Code § 2924 which exempts the acts of trustee exercising the powers under a deed of trust. *Ganas*, 513 B.R. at 406; *Landry*, 493 B.R. at 554-555. The court also noted that the California legislature intended that exemption to be construed narrowly meaning it did not intend by the exemption to permit a creditor owed a mortgage debt to become an unregulated "debt collector." *Ganas*, 513 B.R. at 406; *Landry*, 493 B.R. at 554-555. The court explained that if the RFDCPA did not apply to debts secured by real property for which

foreclosure proceedings could be commenced there would be no legislative reason for enacting the § 2924 exemption. *Ganas*, 513 B.R. at 406; *Landry*, 493 B.R. at 554-555.

This court finds *Ganas* and *Landry* highly persuasive and will follow those opinions.[3] As in *Ganas* and *Landry*, this court also concludes that the secured debt created by the note and deed of trust in this case is not outside the RFDCPA's definition of "consumer debt" which means defendants are within the definition of "debt collectors" under the RFDCPA. Therefore, defendants' motion to dismiss the fourth claim for relief will be denied.

C. Fifth Claim for Relief

The fifth claim for relief alleges a claim for negligence. Plaintiff alleges that defendants owed a duty to comply with the settlement agreement and they breached that duty by demanding and reporting a loan balance greater than the loan balance established by the settlement agreement. Defendants move to dismiss this claim on the basis that, in their capacities as lenders, they owe plaintiff no duty. The court agrees with defendants.

The existence of a duty of care owed by a defendant to a plaintiff is a prerequisite to establishing a claim for negligence, and it is a question of law. *Nymark v. Heart Fed. Sav. & Loan Ass'n.*, 231 Cal. App. 3d 1089, 1095-1096 (1991). The general rule in California is that a lender owes no duty of care to a borrower when its involvement in the loan transaction is limited to its conventional role of a lender of money. Id. at 1096. The general rule also applies to loan modifications. *Lueras v. BAC Home Loans, LP*, 221 Cal. App. 4th 46, 67 (2013).

In an attempt to remove the negligence claim from the general rule that a lender owes its borrower no duty, plaintiff asserts that the settlement agreement creates a duty that the parties owe to on another. In other words, the duty defendants allegedly owed plaintiff and breached had nothing to do with lending of money but, rather, arises from the parties' obligations under their settlement agreement. Plaintiff alleges defendants breached that duty by billing and reporting an inaccurate loan balance. Plaintiff's argument lacks merit for at two reasons.

As to Fannie Mae, there are no allegations that it demanded or reported anything. Dismissal of the second claim for relief as to Fannie Mae supports this conclusion. Therefore, the fifth claim for relief will be dismissed with prejudice as to Fannie Mae.

That leaves Seterus. As to Seterus, ¶ 5 of the settlement agreement expressly states that its "**only duty** is to provide the report described in this [¶ 5]." (Emphasis

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[3] *Landry* and *Ganas* both cite *McGrew v. Countrywide Home Loans, Inc.*, 628 F. Supp. 2d 1237 (S.D. Cal. 2009), for the proposition that mortgage debt is not exempted from the RFDCPA. Plaintiff also relies on *McGrew* to support his position that mortgage debt is covered by the RFDCPA and defendants are "debt collectors" under the RFDCPA. As defendants point out, *McGrew* was subsequently "de-published" and withdrawn from the bound reporter. Although that may be the case, the de-publication of *McGrew* does not weaken or undermine *Ganas* and *Landry*. Courts continue to cite and rely on *Ganas* (and by implication *Landry*) for the proposition that "[n]othing in the statutory definition excludes a consumer debt from the Rosenthal Act merely because it is secured by real or personal property." *Marquette v. Bank of America, N.A*, 2015 WL 461852 at * 17 (S.D. Cal. 2015) (citing *Ganas*, 513 B.R. at 404, 406); *see also Moriarity v. Nationstar Mortg., LLC*, 2013 WL 3354448 at *6 (E.D. Cal. 2013) (noting that the RFDCPA contains a different definition of "debt" than the federal FDCPA and concluding that "there is no reason to believe that mortgage debts are exempted from the RFDPCA. . . . On its face, collection of a mortgage loan fits [The RFDCPA's definition of "debt collection"]."); *Mirtorabi v. Action Foreclosure Services, Inc.*, 2015 WL 2265151 at *5 (Cal. App. 2d Dist. 2015).

added). Providing that report requires Seterus to "electronically notify the major credit reporting agencies . . . to which it furnishes information about the loan secured by the Deed of Trust, that the obligation secured by the Deed of Trust has been timely paid since the date that the loan was acquired by Seterus[.]" According to Exhibit D to the complaint, Seterus has fulfilled that duty inasmuch as it reports that plaintiff pays his loan balance as agreed.

In short, there is one duty imposed by the settlement agreement and, according to the complaint, that duty has not been breached. Therefore, the court will grant defendants' motion as to the fifth claim for relief and dismiss plaintiff's negligence claim with prejudice.

Conclusion

Based on the foregoing;

It is ordered that as to the second claim for relief, defendants' motion to dismiss is granted in part and denied in part; it is granted and the second claim for relief is dismissed as to Fannie Mae and denied and the second claim for relief is not dismissed as to Seterus;

It is further ordered that as to the fourth claim for relief, defendants' motion to dismiss is denied as to all defendants and the fourth claim for relief is not dismissed;

It is further ordered that as to the fifth claim for relief, defendants' motion to dismiss is granted as to all defendants and the fifth claim for relief is dismissed with prejudice and without leave to amend.

It is further ordered that the continued hearing set for July 19, 2016, at 1:00 p.m. is vacated and no appearance at that hearing is necessary.

The court will enter an appropriate minute order.

52. 16-22891-B-13 DANIEL/NANCY BALAGUY
DAO-1 Dale A. Orthner
Thru #53

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
6-20-16 [16]

Final Ruling: No appearance at the July 19, 2016, hearing is required.

The Motion to Value 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 Schools Financial Credit Union at $6,204.00.

The motion filed by Debtors to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2008 Solara convertible ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $6,204.00 as of the petition filing date. As the owners, 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. 1 filed by Schools Financial Credit Union 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 Debtors state only in their declaration that they have "owned the Property for several years." Dkt. 18. However, the note and security agreement attached as an exhibit to the Creditor's proof of claim is dated December 12, 2011, which is more than 910 days prior to the filing of the petition, to secure a debt owed to Creditor with a balance of $8,982.02. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $6,204.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate minute order.

53. 16-22891-B-13 DANIEL/NANCY BALAGUY
JPJ-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-22-16 [20]

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

Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtor's monthly disposable income listed on Form B22C-2 is $820.35. Additionally, Debtor's Schedule I lists Joint-Debtor's monthly income as $6,000.0 and that this income is known or virtually certain to continue. Using the Joint-Debtor's income as stated in Schedule I of $6,000.00 causes Debtors' monthly income to be $12,697.00 and causes the Debtors' disposable income to be $2,774.69. Accordingly, the Debtors must pay no less than $166,481.40 to general unsecured creditors. The plan currently only pays $679.00 to general unsecured creditors.

Feasibility of the plan depends on the granting of a motion to value collateral for Schools Financial Credit Union. That matter was heard and granted at Item #52.

Due to the disposable income issue, the plan filed May 3, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

54. 16-22995-B-13 WALLEN YEP — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
EAT-1 Jonathan D. Matthews — 6-23-16 [37]
Thru #55

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

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

First, the objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $148,685.13 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.

Second, objecting creditor is listed in Class 2. This section of the plan prohibits the Debtor from modifying the rights of a holder of a claim secured only by a security interest in the Debtor's principal residence. Objecting creditor is secured by the first lien on the Debtor's principal residence and is not subject to valuation pursuant to 11 U.S.C. § 1322(b)(2).

The plan filed May 22, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

55. 16-22995-B-13 WALLEN YEP — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Jonathan D. Matthews — 6-22-16 [33]

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

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

First, the Debtor did not appear at the duly noticed first meeting of creditors set for June 16, 2016, as required pursuant to 11 U.S.C. § 343. The Debtor must be thoroughly examined under oath.

Second, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. The Debtor's counsel must proceed to obtain approval of attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Third, the claim of California Controller - Property Tax is improperly classified in Class 5 pursuant to Cal. Rev. & Tax Code § 2187, which states "every tax penalty, interest . . . is a lien against the property assessed." The debt appears to be a secured debt. The plan does not provide treatment for this creditor's secured debt that is either acceptable to the creditor or which will result in payment in full with

a market rate interest. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B).

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

Fifth, the plan will take approximately 468 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).

The plan filed May 22, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

56. 16-20799-B-13 JOHN SHAFER
MET-2 Mary Ellen Terranella

MOTION TO VACATE DISMISSAL OF CASE
7-6-16 [32]

DEBTOR DISMISSED: 07/03/2016

Tentative Ruling: The Motion by Debtor for Relief from Order Dismiss Case was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The court's decision is to grant the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the case. Debtor asserts that his attorney overlooked language in an order dated April 12, 2016, that sustained the Trustee's objection to confirmation of plan and that listed the required documents that were not yet provided to the Trustee. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtor has provided the Trustee with all requested copies of taxes and pay stubs, has attended the continued meeting of creditors, has been granted motions to value collateral, and is current on plan payments. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.,* 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect because Debtor's failure to address the issues raised in the Trustee's objections was due to oversight by Debtor's counsel. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court shall enter an appropriate minute order.

57. 13-33339-B-13 ANTHONY HOFFMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
WFM-1 — 6-17-16 [96]

BANK OF AMERICA N.A. VS.

Final Ruling: No appearance at the July 19, 2016, hearing is required.

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

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

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2573 Ishi Drive, Redding, California (the "Property"). Movant has provided the Declaration of Hasmik Babaian to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Babaian Declaration states that there are 4 post-petition defaults, with a total of $6,876.92 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be over $272,000 as stated in the Babaian Declaration and Schedule D filed by the Debtor. The value of the Property is determined to be $206,000.00 as stated in Schedules A and D filed by Debtor.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

No other or additional relief is granted by the court.

The court shall enter an appropriate minute order.