UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 13, 2016 at 1:00 p.m.

1.	16-24602-B-13 AP-1	ROSEANNA RODRIGUEZ Seth L. Hanson	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL ASSOCIATION 8-31-16 [29]

Tentative Ruling: The Amended Objection to Confirmation of Chapter 13 Plan was not 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). Only 13 days' notice was provided.

The court's decision is to dismiss the objection without prejudice.

There being no other objections, the plan is deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is dismissed without prejudice and the plan filed July 14, 2016, is confirmed.

The court shall enter an appropriate minute order.

2. 13-20903-B-13 PAULA RAEDER MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria 8-1-16 [46]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 1, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

3. 13-35804-B-13 BRENDA BRUESSARD
SS-6 Scott D. Shumaker

MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTOR'S ATTORNEY
7-29-16 [107]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Scott D. Shumaker ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 19. Applicant now seeks additional compensation in the amount of $2,570.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 110.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant requests compensation for filing the second and third modified plans and for the application for fees. The Applicant does not request any compensation related to the conversion of the case to a Chapter 7 and the subsequent re-conversion to a Chapter 13. The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would become delinquent in plan payments and require the filing of a third modified plan. However, the Applicant does not provide an explanation for why the filing of the second modified plan was substantial and unanticipated.

While the court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided, the court finds that only the services provided by Applicant relating to the filing of the third modified plan and application for fees were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$2,570.00
Additional Costs and Expenses	$ 0.00
Less fees for Second Plan Modification	$1,300.00
Total Additional Fees and Costs	$1,270.00

The court shall enter an appropriate minute order.

4.	11-42505-B-13 MET-4	WILLIAM PARSONS AND SHERENE CHANDLER Mary Ellen Terranella	MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD 8-26-16 [77]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of Franchise Tax Board 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 Franchise Tax Board at $0.00.

The motion filed by Debtors to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of various personal property consisting of an account at Umpqua Bank, an account at Bank of America, household goods, clothing, jewelry, three timeshares, a real estate license and real estate broker's license, a 2004 BMW X5 (fully encumbered at the time of filing), a 2003 Chevrolet Tahoe, miscellaneous office furniture, computers, printers, a copier, and two cats ("Personal Property"). The Debtors seek to value the Personal Property at a replacement value of $10,800.00 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).

Additionally, the Debtor co-owns real property with his sister, located at 643 Utah Street, Fairfield, California ("Real Property"). The Internal Revenue Service agreed to value Debtor's interest in this property at $15,000.00. The total value of the Real Property and Personal Property subject to tax lien is $25,800.00. The Internal Revenue Service has a secured claim in the amount of $25,800.00 over these properties.

The Debtors' amended plan filed June 30, 2012, and confirmed on August 14, 2012, provides for the secured claim of Internal Revenue Service in the amount of $25,800.00, the priority claim of Internal Revenue Service in the amount of $65,834.00, and the priority claim of Franchise Tax Board in the amount of $17,095.00. The order confirming the amended plan was entered on October 1, 2012. However, Franchise Tax Board did not amend its proof of claim to reflect this amount as discussed with Debtors' counsel on or about June 29, 2012, to reflect its junior lien to that of the Internal Revenue Service.

No Amended Proof of Claim Filed

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

Discussion

The Internal Revenue Service lien secures a claim with a balance of approximately $25,800.00. Creditor's junior lien secures a claim with a balance of approximately $17,095.00 Therefore, Creditor's claim secured by a junior lien 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.

5. 16-22707-B-13 RICHARD CRABTREE — MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs — 7-28-16 [35]
Thru #6

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

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

The Trustee opposes confirmation of the amended plan and states that the Debtor's projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B).

Debtor has filed a response stating that he will file a second amended plan to resolve the Trustee's issues and requests that he be provided 75 days to confirm the second amended plan.

The amended plan filed July 28, 2016, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and 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.

6. 16-22707-B-13 RICHARD CRABTREE — OBJECTION TO CONFIRMATION OF PLAN BY INTERNAL REVENUE SERVICE
USA-1 Douglas B. Jacobs — 8-26-16 [42]

Tentative Ruling: The Objection of the Internal Revenue Service to Confirmation of Debtor's First Amended 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). A written reply has been filed to the objection.

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

The Internal Revenue Service opposes confirmation of the amended plan on the ground that the plan does not comply with 11 U.S.C. § 1322(a)(2) because it fails to provide for payment in full of its $292,151.80 priority unsecured claim and its $57,876.32 general unsecured claim. Based on the Debtor's scheduled income and expenses, the IRS asserts that the Debtor does not have the ability to make all payments on its claim and therefore the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Debtor has filed a response stating that he will file a second amended plan providing for full payment of the IRS's claim.

The plan filed July 28, 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.

7.	12-39713-B-13 MAC-4	DONALD FLAVEL Marc A. Carpenter	CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 12-4-15 [68]

NOTES: Continued from 7/19/16. Debtor had filed an objection to mortgage payment change. Debtor and Capital One Bank, N.A. have been evaluating Debtor's loan modification application.

Tentative Ruling: The court issues no tentative ruling.

The matter will be determined at the scheduled hearing.

8. 16-21514-B-13 CHERRONE PETERSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1 Peter G. Macaluso — 7-22-16 [51]
Thru #10
U.S. BANK, N.A. VS.

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8675 Elma Avenue, Orangevale, California (the "Property"). Movant has provided the Declaration of Jolynn Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Robinson Declaration states that there are 3 post-petition defaults, with a total of $12,612.99 in post-petition payments past due.

Furthermore, the Debtor intends to surrender the Property as set forth in Class 3 of Debtor's plan. Dkt. 54, exh. 5.

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 $887,515.95 (including $880,220.31 secured by Movant's first deed of trust) as stated in the Robinson Declaration. The value of the Property is determined to be $472,162.00 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). Furthermore, the Debtor intends to surrender the Property as set forth in Class 3 of the Debtor's plan.

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.

9. 16-21514-B-13 CHERRONE PETERSON — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 7-29-16 [58]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

The Motion to Confirm Debtor's Second Amended Plan Filed on July 29, 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 second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 29, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

10. 16-21514-B-13 CHERRONE PETERSON — MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF FROM CO-DEBTOR STAY, AND/OR MOTION FOR ADEQUATE PROTECTION
TRM-61 Peter G. Macaluso — 8-12-16 [66]

DPM ACQUISITION, LLC VS.

Final Ruling: No appearance at the September 13, 2016, hearing is required.

The Motion for Relief From the Automatic Stay and Co-Debtor 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.

DPM Acquisition, LLC ("Movant"), a subsidiary of Diamond Resorts Corporation and successor-in-interest to Pacific Monarch Resorts, Inc., seeks relief from the automatic stay with respect to certain personal property timeshare interest points of 155 points ("Personal Property") which allow the Debtor and non-filing co-debtor the right to use and occupy an individual dwelling unit at any resort location within Monarch Grand Vacations.

Debtor and non-filing co-debtor had entered into a purchase money security agreement with Pacific Monarch Resorts, Inc. for a right to use its timeshares. The agreement was executed on August 8, 2007, where the Debtor and non-filing co-debtor promised to pay Movant the principal sum of $12,060.00 at an interest rate of 18.67% for 120 months. Dkt. 70, Exh. A. Movant has provided the Declaration of Barbara Kerchner to introduce evidence to authenticate the documents upon which it bases its claim.

The Kerchner Declaration states that there are 4 post-petition defaults, with a total of $866.12 in post-petition payments past due. Additionally, there are 86 pre-petition payments in default, with a total of $18,621.58 in pre-petition payments past due.

Only for purposes of this motion, the debt secured by this asset is asserted to be $10,916.66, as stated in the Relief from Stay Information Sheet. However, this information sheet is not considered evidence and the Movant has provided no explanation as to the converted dollar value of 155 "personal property timeshare interest points." Nevertheless, the Debtor did not object to this purported valuation.

The Debtor has listed Diamond Resorts in Schedule E/F of her petition. Dkt. 1. DPM Acquisition, LLC is a subsidiary of Diamond Resorts Corporation. Movant asserts that its claim is not provided for in the plan. The court interprets that the claim is provided for in Class 7 of the plan since it an unsecured nonpriority debt, to the extend a timely claim was filed. Otherwise, movant will be granted ruling to pursue its collateral.

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).

Although the Movant provides no evidence as to the conversion of 155 "personal property timeshare interest points" to a dollar value, the Debtor did not respond and the court determines that cause exists for terminating the automatic stay in any event since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow DPM Acquisition, LLC, a subsidiary of Diamond Resorts Corporation and successor-in-interest to Pacific Monarch Resorts, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Personal Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Furthermore, the order terminating and vacating the automatic stay shall apply to non-filing co-debtor Cedric Peterson.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate minute order.

11. 16-25614-B-13 BEVERLY BAKER HARRIS MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Scott J. Sagaria 8-30-16 [8]
Thru #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 dismiss the motion as moot.

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 Chapter 7 bankruptcy, which was converted from a Chapter 13, was discharged on August 10, 2016, (case no. 15-29588). However, the Debtor provides no case law to support the application of § 362(c)(3)(A) to a prior Chapter 7 case that was discharged.

Section 362(c)(3)(A) limits the duration of the automatic stay to the first 30 days after the filing of a debtor's second case under title 11 if:

> (3) . . . a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)[.]

11 U.S.C. § 362(c)(3) (emphasis added). Code Section 362(c)(3) is unambiguous and explicitly refers to cases filed under chapter 7, 11 or 13 that were pending within the preceding 1-year period but were dismissed. "Dismissal of a title 11 case is provided for under each of the different operative chapters of the Code[.]" Alan N. Resnick and Henry J. Sommer, COLLIER ON BANKRUPTCY ¶349.01[3] (16th ed. 2016). For example, dismissal of a Chapter 7 case may occur only under § 707, which specifies that a court may dismiss a liquidation case only after notice and a hearing and only for cause. 11 U.S.C. § 707. In contrast, a discharge is governed by § 727, which "provides that the court must grant a discharge to a chapter 7 debtor unless one or more of the specific grounds for denial . . . are proven to exist."

Thus, the Bankruptcy Code clearly distinguishes between the terms "dismissal" and "discharge" and they are not interchangeable. Based upon the language of this section, Congress clearly intended to limit the applicability of § 362(c)(3) to specific bankruptcy cases that were dismissed within the preceding 1-year period. *In re Williams*, 390 B.R. 780 (Bankr. S.D.N.Y. 2008). The court finds § 362(c)(3)(A) will not terminate the automatic stay in Debtor's case because she received a discharge, and not a dismissal, in her prior Chapter 7 case. *In re Lovelace*, 2007 WL 187733 at *1 (Bankr. W.D. Mo. Jan. 16, 2007) ("By its terms, § 362(c)(3)(B) is only applicable if the case which was pending during the 1-year period prior to the filing of the current case was dismissed."). Therefore, the Debtor was not required to file a motion pursuant to § 362(c)(3)(B) because the automatic stay would have continued past 30 days after the filing of her current case pending further action before this court. 11 U.S.C. § 362(c)(3)(A).

The motion to extend automatic stay is dismissed as moot.

The court shall enter an appropriate minute order.

12. 16-25614-B-13 BEVERLY BAKER HARRIS — MOTION TO EXTEND AUTOMATIC STAY
SJS-1 — Scott J. Sagaria — 8-30-16 [13]

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 dismiss the motion as moot for reasons stated at Item #11.

The court shall enter an appropriate minute order.

13. 16-20018-B-13 JOJIE GOOSELAW MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso 7-27-16 [60]

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on July 27, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to determine the matter at the scheduled hearing.

The Trustee's objection to confirmation was heard and sustained on April 5, 2016. One of the Trustee's concerns stated in that objection was that the plan did not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Trustee asserts that the amended plan filed July 27, 2016, does not resolve this concern. According to amended Schedules A, B, and C filed March 2, 2016, the total value of non-exempt property in the estate is $134,895.94 but the total amount that will be paid to unsecured creditors is only $68,120.04, which includes the unsecured priority claims of Internal Revenue Service and Franchise Tax Board.

Debtor filed a response proposing to increase the total paid to unsecured creditors to $95,040.00. Debtors state that this will be done by increasing plan payments by $720.00 per month for the remaining 48 months, which is an increase of over $34,000.00. Debtors propose to pay $1,000.00 for months 1-12 and $2,450.00 for months 13-60.

14. 16-23027-B-13 ANGELINA KUBRAKOV
JPJ-3 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-3-16 [48]

CASE DISMISSED: 9/13/16

Final Ruling: No appearance at the September 13, 2016, hearing is required.

An order dismissing this case was signed on September 10, 2016, and the dismissal should be reflected on the docket on September 13, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

15. 12-38030-B-13 TIMY/SHERRIE SHERMAN MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 8-3-16 [51]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on August 3, 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.

The plan does not comply with the applicable commitment period in 11 U.S.C. § 132(b)(4). According to the Statement of Current Monthly Income (Form 22C), the annual income of the Debtors is $125,606.04. The California median family income for a 4-person household is $77,167.00. The applicable commitment period is five years or 60 months. The temporal requirement of § 1325(b) applies regardless of Debtors' projected disposable income. A chapter 13 plan may only be confirmed under 11 U.S.C. § 1325(b)(1)(B) if the plan's duration is at least as long as the applicable commitment period provided by § 1325(b)(4). Debtors propose only 45 months of payments and the plan does not propose payment in full of the allowed unsecured claims.

The Debtors have filed a response stating that § 1325 is not applicable because the Debtors' bankruptcy was originally a business case, Debtor was self-employed, and Debtor is now no longer self-employed resulting in a household income that would be lower than median income. However, the Debtors have not filed any amended schedules showing this change in circumstances.

Therefore, 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.

16. 16-24335-B-13 BRANDON MCDONALD
BHS-2 Ted A. Greene
Thru #17

OBJECTION TO CONFIRMATION OF PLAN BY SUSAN DIDRIKSEN
8-25-16 [37]

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.

The plan incorrectly lists the debt owed to Susan Didriksen, Trustee of the Carolyn McDonald Trust, as a Class 1 debt, which is reserved exclusively for secured debt. The debt owing to Susan Didriksen is for back rent for property located at 3712 Laguna Way, Sacramento, California, and is actually an unsecured debt that should be listed on Schedule F. The Debtor has never possessed a property right in the real property and only had permission to reside in the property subject to paying monthly expenses, such as the mortgage and utilities. Although Susan Didriksen has not filed a proof of claim, the she has submitted an accounting showing that the back rent owed is $12,705.47 and not $8,868.00 as stated in Debtor's plan. Additionally, the court granted Susan Didriksen relief from the automatic stay on August 23, 2016.

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

The court shall enter an appropriate minute order.

17. 16-24335-B-13 BRANDON MCDONALD
JPJ-1 Ted A. Greene

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-24-16 [34]

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 for reasons stated at Item #16. Additionally, the Trustee cannot effectively administer the plan because the plan provides for treatment of the claim of Carolyn McDonald Irrevocable Trust at Class 1. Because the court had granted Susan Didriksen relief from the automatic stay on August 23, 2016, the Trustee shall make no further payments to the claim pursuant to Section 5.03 of the plan.

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

The court shall enter an appropriate minute order.

18. 16-24336-B-13 CEBRON TADEMY
JPJ-1 Kristy A. Hernandez

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-24-16 [26]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

There being no other objection to confirmation, the plan filed July 12, 2016, will be confirmed.

The court shall enter an appropriate minute order.

19. 15-21742-B-13 MARCELLO/GEORGIA MARTINEZ MOTION TO MODIFY PLAN
MC-3 Muoi Chea 7-25-16 [51]

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

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

The Trustee opposes confirmation of the first modified plan and states that the Debtors are delinquent in plan payments, the plan understates the post-petition arrears owed to HSBC, the plan does not provide for a separate dividend to HSBC for the pre-petition mortgage arrears and post-petition mortgage arrears, the plan does not specify a cure of the post-petition arrearage owed to Regional Acceptance, and the plan payments for months 16 through 60 do not equal the aggregate of the claims and Trustee's fees.

Debtors have filed a response stating that they are delinquent in plan payments due to Debtor's medical emergency that resulted in two amputations and the purchase of an electric wheel chair and medical equipment to modify their home. Debtors do not foresee any additional expenses and assert that they will be able to continue plan payments on September 245, 2016. The Debtors request to file a second modified plan to resolve the Trustee's issues.

The modified plan filed July 25, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The Debtors are permitted to file a second modified plan.

The court shall enter an appropriate minute order.

20. 16-24043-B-13 LAURA SHORTRIDGE
JPJ-2 Carl H. Mandabach

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-16-16 [23]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

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

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

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

The court shall enter an appropriate minute order.

21. 16-22644-B-13 PETER RODDA
ETL-2 Douglas B. Jacobs

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
8-11-16 [32]

NATIONSTAR MORTGAGE, LLC VS.

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

The court's decision is to deny without prejudice the motion for relief from stay.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 91 Meadow view Drive, Colsa, California (the "Property"). Movant has provided the Declaration of Raquel Bryan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Bryan Declaration states that there are 2 post-petition defaults, with a total of $1,500.00 in post-petition payments past due. Additionally, there are 55 pre-petition payments in default, with a total of $48,757.20 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $130,781.93 as stated in the Bryan Declaration. The value of the Property is determined to be $250,000.00 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 does not exist for terminating the automatic stay.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the Movant does not dispute Debtor's valuation of the Property and the Debtor has $119,218.07 in equity cushion in the Property that she should be afforded the reasonable opportunity to protect. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Therefore, the court shall not issue an order terminating and vacating the automatic stay.

The court shall enter an appropriate minute order.

22. 16-22447-B-13 VIRGIL EVANS
MJ-1 Pro Se
Thru #23
U.S. BANK, N. A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-16 [43]

DEBTOR DISMISSED: 08/02/2016

Final Ruling: No appearance at the September 13, 2016, hearing is required.

This case was dismissed on August 2, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

23. 16-22447-B-13 VIRGIL EVANS
MJ-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-16 [49]

THE BANK OF NEW YORK MELLON
VS.

DEBTOR DISMISSED: 08/02/2016

Final Ruling: No appearance at the September 13, 2016, hearing is required.

This case was dismissed on August 2, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

24. 16-24249-B-13 LAWRENCE/ROBERTA CURTIS MOTION TO VALUE COLLATERAL OF
DBJ-1 Douglas B. Jacobs CAPITAL ONE
7-11-16 [9]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

The Motion to Value Collateral of Capital One 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).

The Debtors and Capital One, N.A. entered into a stipulation on August 22, 2016. This motion is dismissed as moot.

The court shall enter an appropriate minute order.

25. 16-23751-B-13 RITA SCHROEDER
JPJ-3 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-3-16 [35]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

The Debtor must claim an actual dollar amount when using California Code of Civil Procedure § 703.140(b)(5) to exempt various personal property. The Debtor has instead attempted to use this exemption by exempting "100% of the fair market value, up to any applicable statutory limit." This is improper.

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

The court shall enter an appropriate minute order.

26. 13-35755-B-13 PATRICK TORREY
SJS-1 Scott J. Sagaria

MOTION TO APPROVE LOAN MODIFICATION
8-8-16 [31]

Tentative Ruling: The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). A response has been filed by the Trustee.

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

Debtor seeks court approval to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $870.03 a month to $495.39 a month. The new monthly payment date on the principal balance will be due on November 1, 2013. The new principal balance of the note will be $103,766.03, which will include all amounts and arrearages that will be past due less payments made but not previously credited to the loan. The modified loan is 359 months and the interest rate will be 4.00%. Debtors assert that the reduced payment does not impair the Debtor's ability to maintain the confirmed plan payments.

The Chapter 13 Trustee has filed a response stating that since the loam modification would have been in effect prior to the first disbursement made by the Trustee that occurred in January 2014, the Trustee has over-disbursed to Creditor for a total overpayment of $14,777.21. The Trustee does not oppose the motion as long as the Creditor returns these overpaid funds to the Trustee.

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

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

It is further ordered that Nationstar Mortgage, LLC shall return all overpaid funds to the Trustee.

The court shall enter an appropriate minute order.

27.	16-24463-B-13 JPJ-1	ALEXIS INGLEMON Candace Y. Brooks	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-24-16 [15]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

There being no other objection to confirmation, the plan filed July 8, 2016, will be confirmed.

The court shall enter an appropriate minute order.

28. 16-25470-B-13 MICHAEL HANKS MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 8-25-16 [10]

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

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

Debtor moves to invoke the automatic stay of 11 U.S.C. § 362(a) pursuant to 11 U.S.C. § 362(c)(4)(B). This is the Debtor's third bankruptcy petition pending in the past 12 months. The first case was dismissed on April 22, 2016 (case no. 15-29749). The second case was dismissed on August 15, 2016 (case no. 16-22600). Both cases were dismissed for failure to make plan payments. 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 stay take effect if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(4)(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)(4)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(4)(D).

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

The Debtor asserts that the previous plans were filed in order to protect his primary residence from possible foreclosure. The Debtor asserts that he was unable to focus on his first Chapter 13 bankruptcy after suffering emotionally from the murder of his daughter and taking on the role of primary care giver to his grandchildren who now live with him and his wife. Debtor further asserts that he was unable to make plan payments in his second Chapter 13 bankruptcy case because he only received half pay from his employer after borrowing time toward sick leave. Debtor is confident that he can now make plan payments after being approved for long term disability and that this is very close to what his regular income had been. Debtor asserts that he must save his house for his family, particularly for his grandchildren that need a home.

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.

29. 16-24571-B-13 SHERRON THOMAS
JPJ-1 Jamil L. White
Thru #30

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-24-16 [25]

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 notice first meeting of creditors set for August 18, 2016, as required pursuant to 11 U.S.C. § 343.

Second, 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).

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

Fourth, the plan cannot be effectively administered. Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses but it is impossible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

The plan filed July 13, 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.

30. 16-24571-B-13 SHERRON THOMAS
PPR-1 Jamil L. White

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
8-25-16 [28]

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 overrule the objection but deny confirmation of the plan for reasons stated at Item #29.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $23,625.93 in arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed arrears. The Declaration provided by the creditor is limited and does not provide a detailed accounting of the pre-petition arrears. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item #29, the plan filed July 13, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is

not confirmed.

The court shall enter an appropriate minute order.

31. 16-24478-B-13 DANIEL/TRACY STYPA
FWP-1 Mary Ellen Terranella
Thru #32

OBJECTION TO CONFIRMATION OF PLAN BY FIRST U.S. COMMUNITY CREDIT UNION
8-25-16 [28]

MATTER CONTINUED TO 11/15/16 AT 1:00 P.M. TO BE HEARD AFTER THE EVIDENTIARY HEARING ON THE VALUATION OF COLLATERAL OF FIRST U.S. COMMUNITY CREDIT UNION SET FOR 11/14/16 AT 9:30 A.M.

Final Ruling: No appearance at the September 13, 2016, hearing is required.

The court shall enter an appropriate minute order.

32. 16-24478-B-13 DANIEL/TRACY STYPA
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-24-16 [25]

MATTER CONTINUED TO 11/15/16 AT 1:00 P.M. TO BE HEARD AFTER THE EVIDENTIARY HEARING ON THE VALUATION OF COLLATERAL OF FIRST U.S. COMMUNITY CREDIT UNION SET FOR 11/14/16 AT 9:30 A.M.

Final Ruling: No appearance at the September 13, 2016, hearing is required.

The court shall enter an appropriate minute order.

33. 15-27180-B-13 VINCENT/DEANNA MOORE
PGM-1 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
8-11-16 [33]

Final Ruling: No appearance at the September 13, 2016, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since December 14, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law had opted out of the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). Dkt. 1, p. 45. The court had authorized payment of fees by separate fee application. Dkt. 25. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $1,050.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 33.

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 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 Debtor and bankruptcy estate and reasonable.

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

Additional Fees	$1,050.00
Additional Costs and Expenses	$ 0.00

The court shall enter an appropriate minute order.

34. 16-24685-B-13 APN-1 | CHRISTOPHER/SHERRY LARSEN
Mikalah R. Liviakis | OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
8-3-16 [15]

Tentative Ruling: Secured Creditor, Capital One Auto Finance, a Division of Capital One, N.A.'s Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 in part and overrule in part the objection and deny confirmation of the plan.

The Debtor's plan values a 2012 Cadillac SRX, secured collateral of Capital One, N.A. ("Creditor"), at $25,000.00 in Class 2 of the plan filed July 18, 2016. The Creditor disputes the Debtor's valuation arguing that the vehicle was purchased less than 910 days prior to the filing of this bankruptcy case. The Creditor has provided a copy of the Security Agreement, which shows that the debt was incurred on June 4, 2014, which is 775 days prior to the filing of this bankruptcy. Dkt. 18, Exh. A.

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Because the Debtor incurred the debt 775 days before the bankruptcy filing, the entire amount of the debt on the vehicle must be paid. On this ground, the Creditor's objection is sustained.

However, the court will overrule Creditor's objection related to increasing the interest rate to 6.50%. The Creditor has produced no evidence in support of its objection that Debtors' proposed 4.75% interest rate is inconsistent with *Till*.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default.

The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. The debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

"Moreover, starting from a concededly *low* estimate and adjusting *upward* places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." *Till* at 479.

Here, Creditor has provided no admissible evidence, in the form of declaration or affidavit in support of its objection, of its assertion that the loan should be repaid at higher than Debtor's proposed 4.75% interest rate. Creditor argues that the national prime interest rate of 3.50% is insufficient to account for the risk of default by the Debtor; however, that is not the interest rate proposed by the Debtor. In fact, the Debtor has already provided a 1.25% increase above the national prime

interest rate to account for any greater risk of default. Since the Creditor has produced no evidence that the Debtor's proposed 4.75% interest rate is inconsistent with *Till*, the Creditor's objection is overruled.

Because the plan does not provide for the entire amount of the debt on the vehicle, the plan filed July 18, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

The court shall enter an appropriate minute order.