

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: September 17, 2019

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

2. [15-24706](#)-B-13 JANICE POYTHRESS
[DBJ](#)-1 Douglas B. Jacobs

MOTION TO MODIFY PLAN
8-7-19 [[42](#)]

No Ruling

3. [19-24609](#)-B-13 JAMES HEISS
[GLF](#)-1 Mark Shmorgon

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY, MOTION FOR ADEQUATE
PROTECTION, MOTION FOR RELIEF
FROM CO-DEBTOR STAY
8-30-19 [[19](#)]

THE CARRINGTON COMPANY VS.

Tentative Ruling

The court has before it a motion to confirm that the automatic stay of 11 U.S.C. § 326(a) is not in effect or, alternatively, for relief from the automatic stay for cause under § 362(d)(1) filed by secured creditor The Carrington Company ("Carrington").¹ Dkt. 19. The motion was filed under Local Bankruptcy Rule 9014-1(f)(2). Debtor James Heiss ("Debtor") filed a written opposition to the motion. Dkt. 31. Carrington filed a reply. Dkt. 37.

The court's decision is to set a briefing schedule and continue the hearing on the motion.

Background

The property at issue here is located at 13691 Bates Road, Sutter Creek, California ("Property"). Carrington asserts that it holds a first deed of trust on the Property. The deed of trust secures an obligation which Carrington asserts to be at least \$322,000.00. The Debtor values the Property in Schedules A and D at \$462,325.00.

The Debtor is not the borrower on the loan for which the Property is collateral and the Debtor does not own the Property in his individual capacity. Carrington's borrower is Larry L. Miller, the Trustee of The Intrepid Trust dated October 31, 2015. The Debtor is a beneficiary of the trust.

The trust is subject to and governed by Arizona law. The trust agreement includes a spendthrift provision. And at least according to Carrington, spendthrift provisions are valid and enforceable under Arizona law.

The loan fully-matured on June 1, 2019, at which time the entire balance was due and payable in full. There have been no payments on the loan since November 2018.

A trustee's sale of the Property was scheduled for July 23, 2019. The Debtor filed the petition that commenced this Chapter 13 case on the same day.

Discussion

Although not required to do so because Carrington's motion was served under Local Bankr. R. 9014-1(f)(2), the Debtor filed a preliminary written opposition. The opposition is not at all helpful. In fact, it borders on the frivolous. It is sparse in analysis and it cites California - not Arizona - trust law. There apparently is a difference.

¹Carrington requests an order "[c]onfirming there is no stay in effect under 11 U.S.C. § 362(c)(4)(A)(ii)[.]" Dkt. 19 at 2:19-20. Section 362(c)(4)(A)(ii) applies when two or more bankruptcy cases were pending and dismissed within a preceding year. The court takes judicial notice of its own docket and records and notes that the Debtor has not had two or more cases pending within the preceding year that were dismissed. Section 362(c)(4)(A)(ii) is therefore inapplicable and cannot be a basis for relief.

Carrington also seeks relief under § 362(d)(2). However, that too appears inapplicable. As discussed *infra*, at least initially, it appears there is equity in the property at issue.

Nevertheless, the Debtor has requested a briefing schedule, which the local rules permit. Because only Carrington has had the opportunity to address the application and effect of Arizona trust law, the Debtor's request will be granted. Carrington will also be provided a further opportunity to reply. That said, any further response or opposition by the Debtor shall be consistent with the following:

- (1) The Debtor shall address issues of Arizona - not California - trust law.
- (2) Carrington's argument - that the Debtor's interest in the Property as a beneficiary of an Arizona trust that includes a spendthrift provision is not property of the estate and therefore the automatic stay is inapplicable - is compelling. Nevertheless, the Debtor has not had an opportunity to address that argument or brief issues of Arizona law. The Debtor's supplemental response or opposition shall therefore focus on whether or not a debtor's interest as a beneficiary of an Arizona trust subject to a spendthrift provision is property of the estate.
- (3) The Debtor's attorney is cautioned that any supplemental response or opposition (as well as the Debtor's attorney) shall be subject to Fed. R. Bankr. P. 9011 and/or the court's inherent sanctioning authority. **Stated more bluntly, the court will sanction the Debtor's attorney if it finds that the Debtor's supplemental response or opposition is frivolous, baseless, or filed in bad faith and for an improper purpose.**

Briefing Schedule

The Debtor shall have until October 1, 2019, to file and serve a further response or opposition to Carrington's motion.

Carrington shall have until October 8, 2019, to file and serve an optional reply to the Debtor's supplemental response or opposition.

The hearing on Carrington's motion is ORDERED continued to October 22, 2019, at 1:00 p.m.

IT IS FURTHER ORDERED that this case shall remain assigned to Department B after October 1, 2019.

Adequate Protection Pending Continued Hearing on Carrington's Motion

Carrington states that it is owed approximately \$322,000. The only evidence of the Property's value is the \$462,325 valuation stated in the Schedules. Schedules are filed under penalty of perjury. Fed. R. Bankr. P. 1008. And the Ninth Circuit has noted that Schedules have some evidentiary value. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012).

Based on the amount owed and the value of the Property stated in the Schedules, Carrington is protected by equity of approximately \$140,325 (\$462,325 - \$322,000), which translates to an equity cushion of approximately 30.35%. An equity cushion in excess of 20% provides adequate protection, even in the absence of payments. See *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984). Carrington is therefore adequately protected pending the continued hearing on its motion.

Confirmation Hearing

The court is aware of an October 1, 2019, plan confirmation hearing. See dkts. 15, 34-35. However, so as to not unfairly prejudice Carrington by potentially mooting the relief it requests should a plan be confirmed, see *In re Hileman*, 451 B.R. 522 (Bankr. C.D. Cal. 2011), and because in any event it appears that notice of the confirmation hearing is defective, see *infra*, the plan confirmation hearing will also be continued.

The clerk's office set the plan confirmation hearing for October 1, 2019, at 3:00 p.m. in Courtroom 32, which is Department B and is this court. See dkt. 15 at ¶9. Notice of the date and time of the plan confirmation hearing was sent to all creditors. See dkts. 16-17. Although this court has Chapter 13 hearings calendared for October 1,

2019, this court hears those matters at 1:00 p.m., not 3:00 p.m. This court has no intention of changing the time of its Chapter 13 calendar or adding a 3:00 p.m. Chapter 13 calendar. Notice of the confirmation hearing is therefore defective.

The plan confirmation hearing is ORDERED continued to October 29, 2019, at 1:00 p.m. in Courtroom 32, Department B.

IT IS FURTHER ORDERED that Debtor's counsel shall file and serve on all parties in interest notice of the continued plan confirmation hearing and shall file proof of service of such notice.

The court will prepare a minute order.

4. [19-24314](#)-B-13 CHRISTOPHER BAILEY
[JHW](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-20-19 [[23](#)]

AMERICAN CREDIT ACCEPTANCE
LLC VS.

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

American Credit Acceptance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Fiesta (the "Vehicle"). The moving party has provided the Declaration of Asia Booker to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Booker Declaration states that the Debtor is in default for a total delinquency of \$5,999.00. Movant states that the last payment received by Movant was May 18, 2018.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$15,550.91, as stated in the Booker Declaration. No valuation for the Vehicle is provided by the Creditor or by the Debtor in Schedules A/B or D.

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 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).]

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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, 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.

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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5. [19-23222](#)-B-13 DAVID CARTER
[MS-1](#) Mark Shmorgon

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CHERN LAW LLP FOR
MARK SHMORGON, DEBTORS
ATTORNEY(S)
9-3-19 [[31](#)]

Final Ruling

This fee motion is before the court after the court sustained the Chapter 13 Trustee's objection to counsel's attempt to "opt-in" to a \$4,000 no-look fee under the local rules.

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

In relevant part, Local Bankr. R. 2016-1(a) states as follows: "**When there is an objection** or when an attorney opts out, **compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.**" (Emphasis added). Fed. R. Bankr. P. 2002(a)(6) governs the notice required for an entity's request for compensation or reimbursement of expenses and it requires at least 21 days' notice.

This motion was filed on September 3, 2019, and noticed for hearing on September 17, 2019, which means only 14 - and not 21 - days' notice was given. Notice is therefore deficient. The motion is denied without prejudice.

The court will enter a minute order.

6. [19-23824](#)-B-13 ROLINA BROWN CONTINUED MOTION TO DISMISS
[KPM-1](#) Peter G. Macaluso CASE AND/OR MOTION FOR 180 DAY
Thru #7 BAR AGAINST FILING ANY FURTHER
CASE IN ANY CHAPTER
7-8-19 [[35](#)]

Final Ruling

The case having been dismissed on August 28, 2019, the motion is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. [19-23824](#)-B-13 ROLINA BROWN CONTINUED OBJECTION TO
[KPM-1](#) Peter G. Macaluso CONFIRMATION OF PLAN BY
CREDITOR DOT CREDITORS
STAMBUL/BROWNSTEIN
7-8-19 [[33](#)]

Final Ruling

The case having been dismissed on August 28, 2019, the objection is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 conditionally grant the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) (and not § 362(c)(3)) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on January 2, 2019, after Debtor failed to timely file documents (case no. 18-27742, dkt. 13). The Debtor's second bankruptcy case was dismissed on September 4, 2019, after Debtor failed to file the correct plan form, Class 1 Checklist, and Authorization to Release Information, and for unreasonable delay that is prejudicial to creditors (case no. 19-23389, dkts. 14, 34, 35).

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor states that the previous and present cases were filed in an effort to save her home from foreclosure. Debtor states that her first case failed because the attorney filled out paperwork incorrectly in a hasty effort to stop the foreclosure of Debtor's home. Debtor then filed her second bankruptcy case pro se and attended the meeting of creditors. However, that case was also dismissed days after Debtor found current counsel to substitute into that case. Debtor's circumstances have changed because she has now retained counsel from the start of her bankruptcy, is less scared with going through the bankruptcy process, has the support of two adult children who are willing to contribute \$350.00 each per month, and a renter who is paying \$700.00 per month that will supplement her income from wages. The declaration of one of Debtor's children is provided.

Provided that the Debtor files a declaration from her other adult child and renter by September 24, 2019, the court will deem that the Debtor has offered sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor will be deemed to have shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is conditionally granted and the automatic stay will imposed for all purposes and parties. However, if the aforementioned declarations are not timely filed the motion will be denied. No stay is imposed unless and until an order imposing the stay is entered on the docket. See 11 U.S.C. § 362(c) (4) (A) (i) (C).

The motion is ORDERED CONDITIONALLY GRANTED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the Debtor shall file declarations from her remaining adult child and renter by September 24, 2019, regarding their financial contributions to the Debtor.

The court will enter a minute order.

9. [19-23827](#)-B-13 LUCIA SALAS
[MS-1](#) Mark Shmorgon

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CHERN LAW LLP FOR
MARK SHMORGON, DEBTORS
ATTORNEY(S)
9-3-19 [[29](#)]

Final Ruling

This fee motion is before the court after the court sustained the Chapter 13 Trustee's objection to counsel's attempt to "opt-in" to a \$4,000 no-look fee under the local rules.

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

In relevant part, Local Bankr. R. 2016-1(a) states as follows: "**When there is an objection** or when an attorney opts out, **compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.**" (Emphasis added). Fed. R. Bankr. P. 2002(a)(6) governs the notice required for an entity's request for compensation or reimbursement of expenses and it requires at least 21 days' notice.

This motion was filed on September 3, 2019, and noticed for hearing on September 17, 2019, which means only 14 - and not 21 - days' notice was given. Notice is therefore deficient. The motion is denied without prejudice.

The court will enter a minute order.

10. [19-24734](#)-B-13 WENDY SILVA
[RWH](#)-1 Ronald W. Holland

MOTION TO VALUE COLLATERAL OF
USE CREDIT UNION
8-15-19 [[14](#)]

Tentative Ruling

The motion 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)(B) 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. The court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of USE Credit Union at \$17,336.00.

Debtor's motion to value the secured claim USE Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Ford Edge ("Vehicle"). The Debtor's motion seeks to value the Vehicle at a replacement value of \$16,400.00 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). Creditor filed an opposition asserting the value of the Vehicle to be \$17,336.00. See dkt. 22. Debtor filed a response stating that she is agreeable to Creditor's valuation. See dkt. 28.

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 May 24, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of between \$25,844.00 and \$39,885.11. 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 \$17,336.00. 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11. [19-23553](#)-B-13 SHAWN/HEATHER WHITNEY CONTINUED MOTION TO VALUE
[JGD-1](#) John G. Downing COLLATERAL OF KABBAGE/CELTIC
Thru #12 BANK
7-30-19 [[41](#)]

Final Ruling

The court entered an order on September 7, 2019, granting the motion to convert this case from one under Chapter 13 to one under Chapter 11. The United States trustee subsequently appeared in the case and requested notice of all proceedings. Dkt. 86. The motion and notice were not served on the United States trustee either before or after conversion. Dkt. 44. Service is therefore defective.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. [19-23553](#)-B-13 SHAWN/HEATHER WHITNEY CONTINUED MOTION TO VALUE
[JGD-2](#) John G. Downing COLLATERAL OF MOUNTAIN AMERICA
CREDIT UNION
7-30-19 [[37](#)]

Final Ruling

The court entered an order on September 7, 2019, granting the motion to convert this case from one under Chapter 13 to one under Chapter 11. The United States trustee subsequently appeared in the case and requested notice of all proceedings. Dkt. 86. The motion and notice were not served on the United States trustee either before or after conversion. Dkt. 44. Service is therefore defective.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. [19-21760](#)-B-13 ROYCE KOHLER AND DONALD MOTION TO CONFIRM PLAN
[GG-2](#) HENKLE 8-13-19 [[47](#)]
Gerald B. Glazer

Final Ruling

The motion has been set for hearing on the 35-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)(B) 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 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

14. [19-23960](#)-B-13 TODD BISHOP MOTION TO CONFIRM PLAN
[DBL-1](#) Bruce Charles Dwigins 8-12-19 [[17](#)]

Final Ruling

The motion has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 deny the motion without prejudice.

The motion seeks permission to purchase a used 2018 Nissan Maxima, the total purchase price of which is \$29,333.56 at an interest rate of 14.45% over 71 months with monthly payments of \$573.27. Debtor asserts that she has the necessary income sufficient to cover the Vehicle installment payments and maintain her Chapter 13 payments as shown in her exhibits. Dkt. 43. Although the Debtor has filed an amended Schedule J as exhibit 1, she has not filed a stand-alone amended Schedule J.

Discussion

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

While the Debtor may have sufficient income to cover the monthly financing payment of \$573.27, the transaction is not in the best interest of the Debtor. The loan calls for a substantial interest charge of 14.45%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a car and attempt to borrow money at a 14.45% interest rate. Therefore, the motion is denied.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. [19-24463](#)-B-13 ANTHONY ANDERSON
Pro Se

MOTION TO IMPOSE AUTOMATIC STAY
7-16-19 [[9](#)]

Final Ruling

The motion has been set for hearing on the 28-days notice in accordance with Local Bankruptcy Rule 9014-1(f) (1). However, it does not appear that the Debtor served the Chapter 13 Trustee and all creditors listed on the court's creditor matrix. Due to insufficient service, the court's decision is to deny the motion without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. [19-23696](#)-B-13 MICHAEL WILTON AND DAWN MOTION TO CONFIRM PLAN
[RAH](#)-1 DUNN 8-12-19 [[22](#)]
Richard A. Hall

No Ruling

18. [19-23098](#)-B-13 GARY VITALIE
[MS-1](#) Mark Shmorgon

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CHERN LAW LLP FOR
MARK SHMORGON, DEBTORS
ATTORNEY(S)
9-3-19 [[41](#)]

Final Ruling

This fee motion is before the court after the court sustained the Chapter 13 Trustee's objection to counsel's attempt to "opt-in" to a \$4,000 no-look fee under the local rules.

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

In relevant part, Local Bankr. R. 2016-1(a) states as follows: "**When there is an objection** or when an attorney opts out, **compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.**" (Emphasis added). Fed. R. Bankr. P. 2002(a)(6) governs the notice required for an entity's request for compensation or reimbursement of expenses and it requires at least 21 days' notice.

This motion was filed on September 3, 2019, and noticed for hearing on September 17, 2019, which means only 14 - and not 21 - days' notice was given. Notice is therefore deficient. The motion is denied without prejudice.

The court will enter a minute order.

19. [19-23998](#)-B-13 TANIKA FREEMAN
[JPJ](#)-1 Timothy J. Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-6-19 [[16](#)]

Tentative Ruling

The objection and motion were 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). 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 did not appear at the first meeting of creditors set for August 1, 2019, he and the Debtor appeared at the continued meeting of creditors set for August 29, 2019, as required pursuant to 11 U.S.C. § 343.

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 her federal 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).

Although the Trustee also objects to confirmation on grounds that Debtor's attorney failed to appear at the first meeting of creditors while seeking \$4,000.00 in attorney's fees for a nonbusiness case pursuant to Local Bankr. R. 2016-1(c), the attorney did appear at the continued meeting of creditors held August 29, 2019. Therefore, this objection by the Trustee is overruled.

Nonetheless, for the [two](#) reasons stated above, the plan filed June 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

20. [19-24437](#)-B-13 STEPHEN MICHAUD
[JPJ](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
8-21-19 [[14](#)]

Tentative Ruling

The objection 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). 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.

This matter was continued from September 10, 2019, to provide the Chapter 13 Trustee time to review Debtor's evidence regarding valuation of real property located at 3220 Lassen Way, Sacramento, California. Debtor stated at the September 10, 2019, hearing that the other objections raised by the Trustee - specifically regarding disposable income being paid to non-priority unsecured creditors and the amount of plan payments covering the aggregate of fees, administrative expenses, and claims - are resolved.

The matter will be determined at the scheduled hearing.

21. [17-23854](#)-B-13 TIAJUANNA TOLES
[PGM](#)-4 Peter G. Macaluso

CONTINUED MOTION TO MODIFY PLAN
4-1-19 [[80](#)]

No Ruling