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: October 1, 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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 1, 2019 at 1:00 p.m.

1.	18-27809-B-13 MWB-2	CHERI HOUGLAND Mark W. Briden	MOTION TO CONFIRM PLAN 8-6-19 [73]

No Ruling

2. 19-24609-B-13 JAMES HEISS
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-12-19 [34]

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

The Trustee objects to confirmation to the extent each proposed plan pays attorney's fees through the plan. The Trustee asserts it is less than clear who the attorney of record in each case is. The Trustee has also expressed concerns regarding irregularities in the employment and compensation of the respective debtors's attorneys. More precisely, the Trustee contends that the debtor appears to be represented by different pre-petition and post-petition attorneys and the Rights and Responsibilities of Chapter 13 Debtors, Federal Bankruptcy Rules, and the Local Bankruptcy Rules do not permit payment of what is commonly known as the "no-look" Chapter 13 attorney's fee to one attorney or firm for pre-petition work with the balance of the same "no-look" fee paid to another attorney or firm for post-petition work. The court sustains the Trustee's objection.

The plan filed July 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. 19-23913-B-13 GERARDO ABSALON MOTION TO CONFIRM PLAN
BMV-1 Bert M. Vega 8-13-19 [33]

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.

4.	19-21114-B-13 PGM-3	LYNDA STOVALL Peter G. Macaluso	MOTION TO CONFIRM PLAN 8-23-19 [64]

No Ruling

5. 18-24424-B-13 SULLAY DIN GABISI
WW-2 Mark A. Wolff

MOTION TO SELL AND/OR MOTION TO EXTEND TIME
9-3-19 [93]

Final Ruling

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

6.	19-22526-B-13 MJD-4	KENNETH/ANN VALLIER Matthew J. DeCaminada	MOTION TO CONFIRM PLAN 8-22-19 [47]

No Ruling

7. 18-27627-B-13 CHRISTINE BENNETTS — CONTINUED MOTION TO MODIFY PLAN
MRL-1 Mikalah R. Liviakis — 8-2-19 [25]
Thru #8

No Ruling

8. 18-27627-B-13 CHRISTINE BENNETTS — MOTION TO SELL
MRL-2 Mikalah R. Liviakis — 9-3-19 [34]

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. The Debtor proposes to sell the property described as 10616 Campana Way, Rancho Cordova, California ("Property").

Proposed purchasers, Rehan Alvi and Rubina Alvi, have agreed to purchase the Property for $265,000.00. The first mortgage with Bayview Loan Servicing, LLC will be paid approximately $235,255.67 through escrow from the proceeds of the sale. After the payment of liens on the property and projected closing costs, there is expected to be $13,866.64 in net proceeds from the sale. The Debtor proposes that ll of the net sales proceeds be paid directly from escrow to the Chapter 13 Trustee. This provides 100% payment of all claims remaining in the case.

Bayview Loan Servicing, LLC filed a response of non-opposition.

The Trustee also filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

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

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

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

The court will enter a minute order.

9.	19-24633-B-13 JPJ-1	MANUEL LOPEZ AND PAMELA CORREA LOPEZ Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 9-12-19 [23]

CONTINUED TO 10/15/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL OF CARMAX AUTO FINANCE AND ALLY FINANCIAL.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

10. 17-26434-B-13 TRINA ENOS MOTION TO MODIFY PLAN
PLG-9 Rabin J. Pournazarian 8-26-19 [104]

Final Ruling

The motion 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)(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'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 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, 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.

11. 18-26935-B-13 EARL HAYS
GW-1 Gerald L. White

OBJECTION TO CLAIM OF SF POLICE CREDIT UNION, CLAIM NUMBER 20 , AND/OR OBJECTION TO CLAIM OF SF POLICE CREDIT UNION, CLAIM NUMBER 21
8-8-19 [17]

Final Ruling

The objection to proof of claim was set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). However, it appears that debtor Earl Hays failed to serve SF Police Credit Union. The creditor is not listed anywhere in the Proof of Service By Mail. Therefore, the objection is overruled for deficiency of service.

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

The court will enter a minute order.

12.	19-23035-B-13 BB-1	LILA SADAT Bonnie Baker	MOTION TO CONFIRM PLAN 8-26-19 [33]

No Ruling

13. 19-24338-B-13 JPJ-1 **Thru #14**
LASHRAY WRIGHT
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). A written reply has been filed to the objection.

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

Feasibility depends on the granting of a motion to value collateral for SafeAmerica FCU. That motion is heard and granted at Item #14.

There being no other objection, the plan filed July 10, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

14. 19-24338-B-13 PGM-1
LASHRAY WRIGHT
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF SAFEAMERICA CREDIT UNION
8-23-19 [17]

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 value the secured claim of SafeAmerica Credit Union at $8,000.00.

Debtor's motion to value the secured claim of SafeAmerica Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Lexus ES350 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 6-1 filed by SafeAmerica Federal Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in March 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $11,049.13. 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 $8,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

15. 18-26240-B-13 ROSA FERREIRA
TLA-3 Thomas L. Amberg

MOTION TO MODIFY PLAN
8-26-19 [37]

No Ruling

16. 19-24544-B-13 VINCENT JONES
PPR-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY PRESTIGE FINANCIAL SERVICES
9-10-19 [27]

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

Objecting creditor Prestige Financial Services holds a lien on a vehicle described as a 2018 Ford Escape. The creditor has filed a timely proof of claim in which it asserts $588.39 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed August 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17.	19-21347-B-13 PGM-3	FELICIA HUDSON Peter G. Macaluso	MOTION TO CONFIRM PLAN 8-15-19 [61]

No Ruling

18. 18-26564-B-13 DESMAL MATTHEWS
JPJ-4
DEBTOR DISMISSED: 08/28/2019

MOTION TO CONFIRM PLAN
8-6-19 [106]

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.

19. 19-21165-B-13 FLOYD CHRISTENSEN MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 8-16-19 [34]

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.

20. 19-23572-B-13 LITA GOEBBEL
APN-1 Joseph M. Canning
Thru #21

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
7-18-19 [26]

Final Ruling

Feasibility depends on the granting of a motion to value collateral of Toyota Motor Credit Corporation. The court entered an order granting the stipulation between Debtor and Toyota Moto Credit Corporation regarding the value of a 2016 Toyota Scion IM. *See* dkt. 43. As stated in the stipulation, the Debtor shall amend the Chapter 13 plan and accompanying schedules, as and if necessary, to ensure that they conform with the terms set for in the stipulation.

Therefore, the objection is overruled as moot and the plan filed June 14, 2019, is not confirmed.

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

The court will enter a minute order.

21. 19-23572-B-13 LITA GOEBBEL
JPJ-1 Joseph M. Canning

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [23]

Final Ruling

Feasibility depends on the granting of a motion to value collateral of Toyota Motor Credit Corporation. The court entered an order granting the stipulation between Debtor and Toyota Moto Credit Corporation regarding the value of a 2016 Toyota Scion IM. *See* dkt. 43. As stated in the stipulation, the Debtor shall amend the Chapter 13 plan and accompanying schedules, as and if necessary, to ensure that they conform with the terms set for in the stipulation.

Therefore, the objection is overruled as moot and the plan filed June 14, 2019, is not confirmed.

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

The court will enter a minute order.

22.	19-21876-B-13 RS-1	SCOTT YODER Richard L. Sturdevant	MOTION TO CONFIRM PLAN 8-7-19 [45]

No Ruling

23. 19-20680-B-13 JESSICA KELLER
JPJ-2 Lucas B. Garcia

MOTION TO RECONSIDER DISMISSAL OF CASE
9-16-19 [81]

DEBTOR DISMISSED: 09/04/2019

Final Ruling

The court has before it a motion for reconsideration of an order dismissing this case for a second time filed by Debtor Jessica Keller ("Debtor"). For the reasons explained below, the motion will be denied.

The court has reviewed the motion. Although the motion is not opposed, the absence of an opposition does not necessarily mean the motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. *See generally, In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019).

Oral argument will not assist the court in its resolution of the motion. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). This decision is therefore issued as a Final Ruling.

Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Background

This Chapter 13 case was filed on February 5, 2019. Dkt. 1. It was previously dismissed on May 14, 2019, after the Debtor failed to timely pay filing fee installments. Dkt. 44. This was after the court issued an order on May 4, 2019, conditionally denying an order to show cause to dismiss the case but requiring future installments to be received by their due date or the case would be dismissed without further notice or hearing. Dkts. 40-41.

The Debtor filed a motion to vacate the first dismissal order on May 30, 2019. Dkt. 49. The court granted that motion on July 2, 2019. Dkt. 54. The order vacating the first dismissal order and reinstating this case was entered on July 3, 2019. Dkt. 55. Reinstatement was explicitly conditioned upon the Debtor's confirmation of a plan within 60 days of entry of the order vacating the first dismissal order and reinstating the case or the case would again be dismissed on the Chapter 13 Trustee's ("Trustee") ex parte application. Dkts. 54-55.

The Debtor filed a first amended plan and motion to confirm it on July 5, 2019. Dkts. 58-62. A hearing to confirm the first amended plan was set for August 13, 2019. Dkt. 59.

On July 30, 2019, the Trustee filed two oppositions to the motion to confirm. Dkts. 64-65 and 66-67. The following day, July 31, 2019, the Trustee filed a notice to disregard the opposition filed at Dockets 64-65. Dkt. 70. The opposition at Dockets 66-67 was not implicated and remained on calendar.

The confirmation hearing was held on August 13, 2019, and, at the Trustee's suggestion so that the Debtor could become current on plan payments and amend her petition to correct the filing date of a prior bankruptcy case, the hearing was continued to August 20, 2019. Dkts. 72-73 (audio). Because the Debtor remained delinquent in her plan payments and had not amended the petition, the motion to confirm was denied and the first amended plan was not confirmed at the continued confirmation hearing on August 20, 2019. Dkt. 75-76.

The 60-day period within which to confirm a plan expired on September 3, 2019.[1] The Trustee filed an ex parte application to dismiss, dkt. 77, which the court granted resulting in the dismissal of this case for a second time on September 4, 2019. Dkts. 78-79. The present motion to reconsider and vacate the second dismissal order followed twelve days later on September 16, 2019. Dkt. 81.

Discussion

Debtor's motion suffers from significant procedural and substantive defects.

Procedurally, the motion fails to state the basis upon which relief is requested. It references "excusable neglect" and, thus, presumably requests relief under Fed. R. Civ. P. 60(b)(1) applicable by Fed. R. Bankr. P. 9024.

Substantively, the motion is not supported by any evidence. None. So to the extent the Debtor relies on excusable neglect for relief from the second dismissal order, the Debtor has not established an evidentiary basis under *Pioneer/Briones* to support the relief requested.[2] For that reason alone the motion fails.

The motion also fails because the unsubstantiated and unsupported argument in the motion fails to establish excusable neglect.

The first *Pioneer/Briones* factor weighs against granting relief. The automatic stay of § 362 (as well as any co-debtor stay of § 1301) terminated when this case was dismissed. Once terminated, the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming the automatic stay may be revived if an order that caused it to terminate is vacated, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so here would result in confusion and undue prejudice to creditors who may not comprehend the legal implications of reinstating the bankruptcy case a second time or who may have acted in reliance on dismissal and termination of the automatic and any co-debtor stay. Indeed, according to the Debtor, the latter is precisely what occurred after the case was dismissed the first time. Dkt. 81 at ¶10.c.

The third factor, *i.e.*, the reason for dismissal and whether it was within the movant's control, also weighs against granting relief. The third factor has been characterized as the most significant factor. *See Gibbons v. U.S.*, 317 F.3d 852, 854 (8th Cir. 2003). In fact, the Ninth Circuit has recognized that the third factor alone may preclude a finding of excusable neglect. *Farral v. Cunningham*, 659 Fed. Appx. 925, 927-28 (9th Cir. 2016).

Counsel missed the court-ordered confirmation deadline and the case was dismissed. The motion states that counsel missed the confirmation deadline because he was confused at the August 13, 2019, hearing and because the Trustee did not remind him of the deadline at that hearing. Dkt. 81 at ¶¶ 5-7.

The court initially notes that it is not the Trustee's responsibility to remind attorneys of court-ordered deadlines imposed on a debtor. Rather, it is the debtor's

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[1]The 60-day confirmation period actually expired Sunday, September 1, 2019, and Monday, September 2, 2019, was a federal holiday.

[2]Determination of excusable neglect requires an examination of the *Pioneer/Briones* factors which are as follows: (1) the danger of prejudice to any nonmoving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

attorney who is obligated to keep track of his/her client's deadlines. As the district court stated in *Willis v. JPMorgan Chase Bank, N.A.*, 2017 WL 5665834 (E.D. Cal. 2017), "it is counsel's duty to monitor the court's docket to stay informed of the court's orders and filing deadlines." *Id.* at *2. Indeed, *Willis* describes this duty as imposing a "minimal burden on counsel" given the widespread availability of electronic dockets. *Id.* at *2 n.2.

The court also notes that even if counsel was confused at the initial August 13, 2019, confirmation hearing the motion says nothing about the absence of any request for an extension of the confirmation deadline at or any time after the continued August 20, 2019, confirmation hearing through September 3, 2019, when the deadline expired. It also describes no circumstances beyond the control of the Debtor or her attorney that prevented the Debtor's attorney from requesting an extension, either from the Trustee or the court, during that two-week period.

Given these circumstances, the more plausible scenario seems to be that the Debtor's attorney missed the confirmation deadline and the case was dismissed either because he did not properly calendar the deadline or he simply forgot about it. Neither support a finding of excusable neglect in the context of the third factor. *See e.g., Wei v. State of Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985) (holding that inadvertence, oversight, or failure to calendar deadlines does not constitute good cause, or excusable neglect); *Sally v. Truckee Meadows Water Authority*, 2013 WL 5881707, 2 (D. Nev. 2013) ("Were the Court to find that such conduct constituted "excusable neglect," the standard would be rendered meaningless. Indeed, counsel could always aver that he or she inadvertently forgot about the relevant deadline, and, in most cases, it would be extremely difficult to refute such allegations."). In that regard, *Medina v. Wells Fargo Bank N.A.*, 2016 WL 294429 (C.D. Cal. 2016), is particularly enlightening and persuasive:

> Plaintiff's counsel gives no reason for his failure to timely oppose Defendant's Motion other than that he simply did not calendar its due date. The Court finds this reason insufficient. If counsel's bare, unadorned negligence were enough to grant relief, the word "excusable" would lose all meaning. []. As the Court in *Pioneer* noted, the requirement that the neglect be 'excusable' is what 'will deter creditors or other parties from freely ignoring court-ordered deadlines in the hopes of winning a permissive reprieve.' 507 U.S. at 395. Indeed, cases that have granted relief all involved something more than just failing to note the relevant deadline. [].

Id. at *2 (internal citations omitted).

Although the first and third factors weigh against relief, the second and fourth factors weigh in favor of granting relief. There is no indication of bad faith by the Debtor and the Debtor moved quickly to vacate the second dismissal order. Nevertheless, the gravity of the first and third factors tip the balance against granting relief for excusable neglect under Rule 60(b)(1) particularly in the absence of any explanation why an extension was not or could not have been sought on or after August 20, 2019. Therefore, on this alternative basis, the motion is denied.

Conclusion

For all the foregoing reasons, the Debtor's motion to reconsider and vacate the second dismissal order is denied.

The court will enter a minute order.

24.	14-32183-B-13 MET-2	NEVELL WALLACE AND ANGELA PRUDHOMME-WALLACE Mary Ellen Terranella	MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S) 9-7-19 [69]

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 grant the motion for compensation.

Request for Additional Fees and Costs

Mary Ellen Terranella ("Applicant") substituted into this case on June 20, 2018, three-and-a-half years after the petition was filed, and had contracted with the Debtors at a rate of $350.00 per hour. The application reflects that Applicant spent 11.20 hours in post-confirmation services that were actual, reasonable, unanticipated, and necessary. Applicant spoke to or met with the Debtors several times to discuss the delinquency in their case since they had paid over $279,000.00 into their plan and were facing dismissal based on the Trustee's Notice of Default and Application to Dismiss. Applicant seeks fees in the amount of $3,920.00 and costs of $44.37, for a total of $3,964.37. Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 69.

The Debtors's prior attorney W. Scott de Bie had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 17.

Discussion

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks 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).

Applicant here substituted into this case three-and-a-half years after the petition was filed. Applicant states that at the time she substituted into this case, it was unanticipated that a death in the family would require Joint Debtor to take time off from work, losing income from her job, or that the Debtors would have expensive car repairs in April 2019. This resulted in delinquency of plan payments and Applicant having to file a modified plan.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

Additional Fees	$3,920.00
Additional Costs and Expenses	$ 44.37

The motion is ORDERED GRANTED for additional fees of $3,920.00 and additional costs and

expenses of $44.37.

The court will enter a minute order.

25. 15-23799-B-13 MJD-3 STEPHANY MURPHY
Matthew J. DeCaminada
MOTION TO MODIFY PLAN
8-27-19 [109]
Thru #26

Final Ruling

The motion 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)(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'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 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, 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.

26. 15-23799-B-13 MJD-4 STEPHANY MURPHY
Matthew J. DeCaminada
MOTION TO APPROVE LOAN MODIFICATION
8-28-19 [116]

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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit with Lakeview Loan Servicing, LLC ("Creditor"). Plaza Home Mortgage, whose claim the plan filed April 22, 2016, provides for in Class 4, transferred its interest in real property to Creditor. Creditor has agreed to a loan modification of $1,690.79 a month. This is a slight increase from the $1,661.28 monthly contract installment paid to Plaza Home Mortgage. The modification provides an interest rate of 4.250%, has a modified principal balance of $217,657.63, and will start September 1, 2019. The modification does not alter or affect the status or priority of any other existing liens on the property. Debtor

contends that she has the ability to pay this claim as evidenced by amended Schedules filed August 28, 2019.

The motion is supported by the Declaration of Stephany Murphy. The Declaration affirms Debtor's desire to obtain the post-petition financing.

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.

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

The court will enter a minute order.

27. 18-20909-B-13 YVONNE WRIGHT MOTION TO INCUR DEBT O.S.T.
RK-2 Richard Kwun 9-22-19 [44]

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

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

The motion seeks permission to purchase a 2016 Acura TLX Tech 3.5, the total purchase price of which is $37,975.92 with monthly payments of $441.11. Seller Niello Acura has offered to provide Debtor with a credit of $6,000.00 toward the purchase of the vehicle. The interest rate on the loan is 16.7%. Debtor contends that she had offers with 18% to 25% interest rates and that this was the best interest rate she could find in light of her status as a Chapter 13 debtor. Debtor states that a reliable vehicle to drive to Stockton, California where she works as a school principal and to transport her husband's adult daughters, who are recent immigrants from Jamaica and do not drive.

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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is not reasonable. The transaction is not in the best interest of the Debtor. The loan calls for a substantial interest charge of 16.7%. Moreover, it is unclear to the court how in good faith the Debtor could propose to purchase an Acura costing nearly $40,000. 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 luxury car and attempt to borrow money at a 16.7% interest rate. The motion is denied without prejudice.

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

The court will enter a minute order.