UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 4, 2016 at 1:00 p.m.

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1. 16-26003-B-13 ROBIN SWANSON — MOTION TO EXTEND AUTOMATIC STAY
MOH-1 Michael O'Dowd Hays — 9-20-16 [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 grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 15, 2016, after Debtor failed to commence making plan payments; failed to provide the Trustee with payment advices for the 60-day period preceding the filing of the petition; failed to provide the Trustee with a copy of her federal income tax return for the most recent tax year before the filing of the petition; failed to file a detailed statement of income and expenses attributable to the rental of property or the operation of a business; failed to specify how her counsel's fees will be approved; and proposed a plan that paid unsecured creditors $0.00 even though Form 22 showed that the Debtor would have projected disposable income of more than $68,000.00 over the next five years (case no. 16-23869, dkt. 43, 47). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor asserts that the previous plan was filed in order to prevent the foreclosure of her residence and adjoining business property. Debtor states that her circumstances have changed and that the present plan will succeed because her income has increased and she has hired competent legal counsel. In the prior bankruptcy case, Debtor's source of income was from her 17 years of employment with the Butte County Office of Education. In the present case, the Debtor's source of income continues to be with BCOE but is also supplemented by rental income and income and tips from her second job.

More importantly, Debtor has hired new legal counsel who will communicate with her regarding her duties and will propose a plan that provides for Debtor's obligations in the correct classes. Debtor asserts that legal counsel in her prior bankruptcy case did not communicate with her, that she communicated exclusively with his paralegal, and that she did not receive clear instructions from him or his staff about the necessity of having her first proposed plan payment of $2,052.00 received by July 25, 2016, and therefore instead Debtor brought the funds to her meeting of creditors held on August 11, 2016, at 1:30 p.m. Although Debtor appeared at the 341 meeting, Debtor's prior legal counsel did not. The following day, the Chapter 13 Trustee filed a motion to disgorge Debtor's attorney's fees in the amount of $3,800.00. The motion was granted in part (case no. 16-23869, dkt. 44) and Debtor was subsequently refunded $3,800.00. Debtor asserts that the refund will be endorsed and paid to the Chapter 13 Trustee to be applied to her mortgage arrears thereby shorting the duration of her current plan.

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.

2. 16-24908-B-13 SHERWIN/LORINA PANEM — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Seth L. Hanson — 9-8-16 [14]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtors have filed a reply asserting that the Trustee's objections will be or are resolved. If at the hearing it is determined that the Trustee's objections are not resolved, the court will adopt the below tentative ruling.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $7,000.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the proposed plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Bank in Class 1 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The plan cannot be effectively administered nor will the plan be amended through the confirmation order when what is effectively a plan amendment will adversely affect other creditors.

Third, the Debtors have not provided the Trustee with copies of income tax returns for 2014. Without these documents, the Trustee is unable to determine if Debtor's business Sherwin Panem DDS Dental Corporation DBA Palladium Dental Care is solvent and necessary for reorganization. The Debtors have not complied with 11 U.S.C. § 521.

The plan filed July 27, 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.

3. 16-25118-B-13 RICHARD CHASTAIN — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 David P. Ritzinger — 9-8-16 [19]

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 submit proof of his social security number at the meeting of creditors on September 1, 2016, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting was continued to September 29, 2016, to allow the Debtor the opportunity to present evidence of his social security number. The Debtor did not appear at the continued meeting of creditors.

Second, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's business. Feasibility of the plan cannot be fully assessed pursuant to 11 U.S.C. § 1325(a)(3) or (6).

Third, the Debtor has not amended his petition to indicate that he has been associated with a business in the last 8 years. According to Debtor's Schedule I and Statement of Financial Affairs, the Debtor has an interest in a business as a self-employed handyman. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Fourth, the Debtor has not provided the Trustee with copies of certain items including, but not limited to, income tax returns for 2014, proof of all required insurance, and proof of required licenses and permits related to Debtor's business. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, because the Internal Revenue Service filed a proof of claim in the amount of $66,804.83, the plan will take approximately 170 months to complete. This exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed August 4, 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.

4. 15-22123-B-13 ANTHONY/DEBORAH MORALES — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 Gerald B. Glazer — 8-24-16 [65]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay in order to apply funds from the Debtors' savings account ending in 4752 to Debtor Anthony Morales' personal loan agreement with Movant. The moving party has provided the Declaration of Cecilia Shelton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Shelton Declaration states that the Debtor Anthony Morales executed a written personal loan agreement on or about August 9, 2014, secured by savings account number ending in 4752. The Declaration states that Debtor has not made payments since March 15, 2015, that the agreement reached maturity on August 15, 2015, and that the matured contractual balance of $4,032.81 is due and owing. The Debtors' savings account is believed to have a value of $4,737.00. Debtors filed their bankruptcy on March 17, 2015.

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 Debtors 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 Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the savings account ending in 4752, 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 court shall enter an appropriate minute order.

5.	16-25025-B-13 JPJ-1	DONNA OCONNELL Nikki Farris	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-14-16 [18]

CONTINUED TO 10/18/16 TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO VALUE COLLATERAL FOR NATIONSTAR.

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The court shall enter an appropriate minute order.

6. 14-27028-B-13 TONI PAREDERO
PGM-3 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
8-26-16 [73]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor seeks court approval to incur post-petition credit. Seterus, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,448.14 a month to $1,189.66 a month. The modification will be effective August 1, 2016, and the first payment is due that day and each subsequent month. There interest rate of 3.750% began to accrue from July 1, 2016. The modification principal balance of the note will include all amounts and arrearages that will be past due as of the modification effective date less amounts paid to the lender but not previously credited to the Debtor's loan. The principal balance of the loan that will be due and payable is $216,780.41. The maturity date will be July 1, 2056. The modification does not affect the distribution to unsecured creditors whom were originally to be paid no less than 0.00% in the original Chapter 13 plan.

The motion is supported by the Declaration of Toni Paredero. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's' current monthly mortgage payments.

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 court shall enter an appropriate minute order.

7. 16-24931-B-13 LINDA BECK
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-8-16 [14]

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

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

First, the Debtor has not submitted proof of her social security number to the Trustee.

Second, the Debtor has not provided the Trustee with copies of pay stubs for the pay periods of January 1, 2016, through May 1, 2016. The Debtor has not complied with 11 U.S.C. § 521(a)(3). It cannot be properly assessed whether the plan filed July 28, 2016, complies with 11 U.S.C. §§ 1325(a)(3) or (6) or § 1325(b)(1)(B).

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.

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.

8. 13-27034-B-13 NANCY LOPEZ — CONTINUED MOTION TO DISMISS CASE
JPJ-5 Scott J. Sagaria — 8-1-16 [111]
Thru #9

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

The court's decision is to dismiss the case.

This matter was continued from August 30, 2016, to be heard in conjunction with the Debtor's motion to confirm third modified plan at Item #9. The Trustee had moved to dismiss the case due to delinquency in plan payments (dkt. 111). The Trustee has also objected to confirmation of the third modified plan for delinquency in plan payments (dkt. 130). The Debtor does not appear to be able to maintain monthly plan payments on a regular basis.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). The motion is granted and the case is dismissed.

The court shall enter an appropriate minute order.

9. 13-27034-B-13 NANCY LOPEZ — MOTION TO MODIFY PLAN
SJS-7 Scott J. Sagaria — 8-19-16 [122]

Tentative Ruling: 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 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 Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,265.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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.

10. 16-24335-B-13 BRANDON MCDONALD
JPJ-2 Ted A. Greene

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-1-16 [43]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions 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.

11. 16-24935-B-13 MICHAEL GRAZIADEI
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-8-16 [14]

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

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

First, the Debtor has not amended the Statement of Financial Affairs as requested by the Trustee to reflect the sale of an S-corporation by the name of 3M Ranch, Inc. at Question #18 or #27. Without this information, it cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(4) or (6) . The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors and therefore does not comply with 11 U.S.C. § 1325(b)(1)(B). Based on the understatement on Line 2 of the Means Test in the amount of $450.00, the overstatement of "Court-Ordered Payments" on Line 19 in the amount of $1,666.00, and the overstatement of "Additional Food and Clothing on Line 30 in the amount of $64.00, Line 45 of the Means Test should be $2,336.47 and the Debtor must pay no less than $140,188.20 to general unsecured creditors. The plan proposes to pay only $20,797.12 to general unsecured creditors.

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.

12. 16-24853-B-13 JOSEPH BOTSCH
JPJ-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-8-16 [22]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on September 8, 2016. The confirmation hearing for the amended plan is scheduled for November 1, 2016. The earlier plan filed August 5, 2016, is not confirmed.

The court shall enter an appropriate minute order.

13. 15-26156-B-13 PHILIP/NANCY SEALS — OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
JPJ-1 Joseph Feist — 8-5-16 [26]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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

The court's decision is to sustain the objection.

The Trustee objects to the attorney's fees totaling $2,962.00 listed on the Notice of Postpetition Mortgage Fees, Expenses and Charges ("Notice") filed by SN Servicing Corporation ("Creditor") on behalf of U.S. Bank N.A. on July 22, 2016. Creditor is the transferee of Claim No. 5-1 from Rushmore Loan Management Services, LLC, which was the holder of the first deed of trust on the Debtors' primary residence. The plan confirmed September 27, 2015, provides treatment for Rushmore Loan Management Services in Class 1. Creditor was transferred the claim on April 5, 2016. According to the court's docket, no other documents related to this loan have been filed.

The Notice does not specify what services were provided, the amount of time spent for those services, and counsel's hourly rate. Without a detailed explanation of the services provided, the time spent and counsel's hourly rate and fees do not appear to be reasonable or necessary.

Based on the evidence before the court, the Objection to the notice of mortgage payment change is sustained.

The court shall enter an appropriate minute order.

14. 16-24656-B-13 BENJAMIN HOLLINGSWORTH
JPJ-1 Amanda G. Billyard

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-8-16 [19]

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

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

First, although the Debtor failed to appear at the meeting of creditors set for September 1, 2016, the Debtor did appear at the continued meeting of creditors set for September 15, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided evidence of his social security and pension income as requested by the Trustee. Therefore, feasibility of the plan cannot be fully assessed pursuant to 11 U.S.C. §§ 1325(a)(3) or (6).

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 Debtor is delinquent to the Chapter 13 Trustee in the amount of $425.23, which represents approximately 1 partial plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,997.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed July 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

15. 16-24757-B-13 RAQUEL BRIONES
JPJ-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-14-16 [14]

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). A 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 has provided a declaration of her son stating that he will contribute to the Debtor the sum of $350.00 to help with bills for the life of the plan. The Debtor has carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

Second, the Debtor has not provided evidence to substantiate her value of her residence at $106,547.00. Although the Debtor has filed a response asserting that the value of the residence is $106,547.00, the Declaration of Raquel Briones states a different value at $105,000.00. The Debtor justifies her valuation by pointing to the condition of the property by stating repairs need to be done to the carpet, paint, flooring, and bathroom that has dry rot. However, because the Debtor has not been qualified as an expert, these statements by the Debtor are not admissible. Unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . . ." Fed. R. Evid. 703.

Third, without evidence to substantiate the value of the Debtor's residence, it cannot be fully assessed whether the plan complies with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Based on the Trustee's value of the Debtor's residence at $172,000.00, the total amount of non-exempt property in the estate is $15,562.00. The total amount that will be paid to unsecured creditors in the Debtor's plan is only $0.00.

The plan filed July 21, 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.

16. 16-23958-B-13 GRACE KENNEDY
Gary S. Saunders

MOTION TO CONFIRM PLAN
9-15-16 [35]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Motion to Confirm the First Amended Chapter 13 Plan of Debtor was not 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). Only 19 days' notice was provided.

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

The court shall enter an appropriate minute order.

17. 11-35559-B-13 DOUGLAS/BRENDA RICHTER
RAC-4 Richard A. Chan

MOTION FOR WAIVER OF THE SECTION 1328 CERTIFICATE REQUIREMENTS
8-29-16 [59]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Suggestion of Death and Motion for Waiver of § 1328 Requirement has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

The Debtor passed away on March 23, 2016. Prior to his death, the Debtor and Joint Debtor completed their plan payments and filed a certification of completion of a post-petition course on personal financial management. However, the Debtor is unable to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

The court shall enter an appropriate minute order.

18. 16-20360-B-13 PEDRO/CATALINA ZAMBRANO MOTION TO CONFIRM PLAN
TOG-2 Thomas O. Gillis 8-18-16 [60]

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

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

First, Debtors have not amended the Statement of Financial Affairs to provide additional information for businesses KGG Inc. And Wal Trucking as requested by the Trustee at the meeting of creditors on July 7, 2016. Feasibility cannot be assessed pursuant to 11 U.S.C. § 1325(a)(3), (4) or (6) until the Trustee has received these documents. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Second, the Debtors have not amended the petition to account for a bank account with Save Credit Union as requested by the Trustee via email to the Debtors' attorney. Feasibility cannot be assessed pursuant to 11 U.S.C. § 1325(a)(3), (4) or (6) until the Trustee has received these documents. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtors have not provided the Trustee with requested copies of pay stubs received between October 1, 2016, and March 31, 2016, as well as copies of bank statements from all bank accounts listed on Schedule B of the petition form October 1, 2015, through March 31, 2016. It cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(3), (4) or (6). The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate minute order.

19. 16-24860-B-13 WILLIAM MILLER
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-8-16 [17]

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

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $740.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $740.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed July 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

20. 16-25461-B-13 MICHAEL REYNOLDS
JJC-1 Julius J. Cherry

MOTION TO VALUE COLLATERAL OF OREGON COMMUNITY CREDIT UNION
8-19-16 [8]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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

The court's decision is to value the secured claim of Oregon Community Credit Union at $18,900.00.

The motion filed by Debtor to value the secured claim of Oregon Community Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Audi S5 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $18,900.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on November 5, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $38,497.93. 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 $18,900.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate minute order.

21.	16-25262-B-13 SDH-1	BOBBY/KRISTINA JOHNSON Scott D. Hughes	MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES, INC. 8-29-16 [14]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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

The court's decision is to value the secured claim of Consumer Portfolio Services, Inc. at $5,000.00.

The motion filed by Debtors to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Joint Debtor's declaration. Debtors are the owners of a 2010 Hyundai Elantra ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Consumer Portfolio Services 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 on July 20, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,982.33. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $5,000.00. *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 court shall enter an appropriate minute order.

22. 16-20664-B-13 RICHARD/ROBERTA BLAKE MOTION TO MODIFY PLAN
ALF-1 Ashley R. Amerio 8-26-16 [27]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Motion to Confirm First Modified Plan Dated August 24, 2016, 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 Debtors have 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 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

23.	16-21664-B-13 HLG-1	BRYAN ULRICK AND BILLI JO RICHMOND-ULRICK Kristy A. Hernandez	MOTION TO APPROVE LOAN MODIFICATION 8-31-16 [24]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Motion to Approve 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtors seek court approval to incur post-petition credit. Pennymac Loan Services, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,434.00 a month to $1,432.19 a month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.750% over the next 30 years. The new monthly payment is effective June 1, 2016, and will mature on June 1, 2046. The new principal balance is $200,852.73.

The motion is supported by the Declaration of Bryan Ulrick and Billi Jo Richmond-Ulrick. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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

The court shall enter an appropriate minute order.

24.	16-25468-B-13 PSB-2	ROBERT DANIEL AND DIANNA DANIEL Pauldeep Bains	MOTION TO VALUE COLLATERAL OF BARCLAYS BANK PLC 9-1-16 [19]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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

The court's decision is to value the secured claim of Barclays Bank PLC at $0.00.

The motion to value filed by Debtors to value the secured claim of Barclays Bank PLC("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1611 Centennial Drive, Fairfield, California ("Property"). Debtors seek to value the Property at a fair market value of $305,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $358,555.00. Creditor's second deed of trust secures a claim with a balance of approximately $171,829.50. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court shall enter an appropriate minute order.

25. 16-24571-B-13 SHERRON THOMAS MOTION TO SUBSTITUTE ATTORNEY
LW-2 Jamil L. White 9-13-16 [33]

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

The court's decision is to grant the motion.

Jamil L. White ("Movant"), attorney for Debtor, moves for permissive withdrawal as attorney because the relationship between Debtor and Movant's office has become strained. Movant asserts that the Debtor has taken certain post-filing actions contrary to Movant's advice and is no longer responsive to Movant's attempts at communication. Movant states that he cannot effectively continue to represent Debtor at this time. Movant further asserts that his withdrawal will not prejudice the Debtor since there is no property of the estate in danger of being repossess, seized, or foreclosed upon and there is no pending motion to dismiss filed. The Debtor has been informed by the Movant both orally and electronically of his intent to withdraw from representation, but the Debtor has not been responsive.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." *American Economy Ins. Co. v. Herrera*, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting *Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

(A) In General.

> (1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.
>
> (2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client

(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or

(b) seeks to pursue an illegal course of conduct, or

(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The Movant asserts that the Debtor has taken certain post-filing actions contrary to Movant's advice and is no longer responsive to Movant's attempts at communication. Because of this, Movant cannot effectively represent the Debtor at this time. Movant has orally and electronically informed the Debtor of his intent to withdraw from the matter and sought her consent. However, the Debtor has been unresponsive. These are causes for permitting the Movant's withdrawal pursuant to California Professional

Conduct Rule 3-700(C)(1)(d) (and not rule 3-700(C)(5) as asserted by Movant).

The court will permit the Movant's withdrawal from this bankruptcy case. The motion will be granted. The Movant shall mail the Debtor her case file within seven (7) days of the October 4, 2016, hearing on this motion, at the last known address of the Debtor.

The court shall enter an appropriate minute order.

26.	15-29773-B-13 PGM-4	CHARLES HUGHES AND VIRA EISON Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 9-2-16 [65]

Final Ruling: No appearance at the October 4, 2016, , hearing is required.

The Motion for Order Approving Trial 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtors seek court approval to incur post-petition credit. CitiMortgage, Inc. ("Creditor"), whose claim is provided for in Class 1 of the plan confirmed May 11, 2016, has agreed to a trial modification which will reduce Debtors' mortgage payment from the current $1,573.44 a month to $1,317.28 a month. Creditor offered Debtors a trial modification stating that after all trial payments are timely made and the Debtors have continued to meet all eligibility requirements of the modification program, the mortgage will be permanently modified. Debtors were to make 3 payments in the amount of $1,317.28 beginning May 1, 2016, with the last payment under trial to be made July 1, 2016. The Debtors have made all 3 payments. The Declaration of Charles Hughes and Vira Eison states that the Debtors expect to receive the permanent modification in August but that Creditor stated that additional time is needed to finalize the loan modification and advised the Debtors to continue paying the trial payments.

The motion is supported by the Declaration of Charles Hughes and Vira Eison. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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

The court shall enter an appropriate minute order.

27. 16-20573-B-13 FELICIANO RIOS
MET-4 Mary Ellen Terranella

MOTION TO APPROVE LOAN MODIFICATION
8-31-16 [59]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor seeks court approval to incur post-petition credit. Debtor asserts that Bank of America, N.A. ("Creditor"), whose claim is provided for in Section 6 Additional Provisions of the plan confirmed May 17, 2016, has agreed to a permanent loan modification in the same amount as Debtor's trial loan modification payments of $1,628.87 per month. The trial loan modification was granted by the court on May 13, 2016.

Although the motion is supported by the Declaration of Feliciano Rios, there is no evidence of a permanent loan modification agreement. No exhibits have been filed showing that Bank of America, N.A. has agreed to a permanent loan modification.

The motion is denied without prejudice.

The court shall enter an appropriate minute order.

28. 16-24873-B-13 LYNDA COBURN
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-8-16 [14]

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 has not filed a notice of related cases since the Debtor's spouse has an active bankruptcy case (no. 14-20375). The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Debtor is not entitled to claim her interest in the property located at 3929 Soaring Eagle Tr., Vacaville, California, as exempt under California Code of Civil Procedure § 704.30 since this property was not her primary residence on the date the petition was filed.

The plan filed July 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

29. 16-25080-B-13 CORY MADISON
JPJ-1 Mark W. Briden

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-14-16 [19]

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

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

The Internal Revenue Service filed a priority claim in the amount of $59,439.79. The plan will take approximately 147 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

The court shall enter an appropriate minute order.

30. 16-25086-B-13 FLOYDETTE JAMES
JPJ-1 Steven A. Alpert

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-9-16 [14]

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

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

First, although the Debtor failed to appear at the duly noticed first meeting of creditors set for September 1, 2016, the Debtor did appear at the continued meeting of creditors on September 29, 2016, as required pursuant to 11 U.S.C. § 343.

Second, feasibility depends on the granting of a motion to value collateral for Wells Fargo Bank for the second deed of trust on the Debtor's residence. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

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).

The plan filed August 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

31. 16-22891-B-13 DANIEL/NANCY BALAGUY MOTION TO CONFIRM PLAN
DAO-2 Dale A. Orthner 8-16-16 [42]

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

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

The Trustee objects to confirmation on the same grounds raised in its objection to confirmation filed on June 22, 2016, and sustained by the court on July 19, 2016. Dkt. 20, 31, 35. The Debtors have failed to resolve the issues previously raised by the Trustee and sustained by the court.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Form 122C establishes a presumption of Debtors' monthly disposable income that is payable to unsecured creditors. This presumption may be rebutted by showing a substantial change in circumstances and that the actual income and/or expense figures used in lieu of those on Form 122C for calculating disposable income are known or virtually certain at the time of confirmation. *Hamilton v. Lanning*, 130 S. Ct. 2464, 2471, 2478 (2010).

Debtors' Form 122C-1 filed July 12, 2016, lists Joint Debtor's income as $4,045.66. However, Schedule I filed May 3, 2016, lists Joint Debtor's income as $6,000.00 and that she has been employed with Progressive Home Care as a registered nurse for 4 months when the petition was filed. Joint Debtor's employment is virtually certain to continue. Using the Joint Debtor's income of $6,000.00 listed on Form 122C-1, this causes the Debtors' monthly income to be $12,697.00 and their disposable income to be $1,478.28. As such, the Debtors must pay no less than $88,696.80 to general unsecured creditors. The plan will pay a dividend of only 2%, or approximately $2,077.91 to general unsecured creditors.

Debtors have filed a response but do not clarify the discrepancy in Joint Debtor's income on Form 122C-1 and Schedule I. Debtors also do not appear to understand the ruling in *Hamilton* in which the U.S. Supreme Court affirmed the Tenth Circuit's holding that a court calculating projected disposable income should begin with the presumption that the figure yielded by the mechanical approach is correct, but that the figure could be rebutted by evidence of a substantial change in circumstances. Debtors have provided no evidence of substantial change in circumstances to rebut the presumption established by Form 122C-1. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate minute order.

32. 11-40498-B-13 FREDERICK/MARSHA AIKENS
RLG-6 Robert L. Goldstein

MOTION FOR RELIEF FROM OBLIGATION TO FILE DOCUMENTS
8-25-16 [100]

Final Ruling: No appearance at the October 4, 2016, hearing is required.

The Notice of Death and Motion for Relief from Obligation to File Documents (FRBP 7025) [sic] has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

The Debtor passed away on December 27, 2013. Prior to his death, the Debtors completed their plan payments and filed a certification of completion of a post-petition course on personal financial management. However, the Debtor is unable to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

The court shall enter an appropriate minute order.

33. 15-27199-B-13 ELIZABETH FRAZIER — CONTINUED MOTION TO DISMISS CASE
JPJ-1 Marc A. Carpenter — 8-2-16 [22]
Thru #34

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

The court's decision is to not dismiss the case.

This matter was continued from August 30, 2016, to be heard in conjunction with the Debtor's motion to modify plan at Item #34. The modified plan is granted subject to certain conditions.

Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court shall enter an appropriate minute order.

34. 15-27199-B-13 ELIZABETH FRAZIER — MOTION TO MODIFY PLAN
MAC-1 Marc A. Carpenter — 8-12-16 [27]

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

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following language: "Additional Provisions #1 Payment to Internal Revenue Service and #2 Payment to Franchise Tax Board shall be stricken."

The Internal Revenue Service and Franchise Tax Board are already provided for in Class 5. Class 5 Priority Claims are paid on a pro rata basis. Assigning a monthly dividend to these class, as Debtor attempted to do in the Additional Provisions, would create an administrative burden for the Trustee.

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

The court shall enter an appropriate minute order.

35. 16-23799-B-13 MELISSA REGALA
DVW-2 Mark A. Wolff

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
9-9-16 [34]

U.S. BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From Automatic Stay and Co-Debtor Stay; Memorandum of Points & Authorities in Support Thereof has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Movant U.S. Bank, N.A., as legal title trustee for Truman 2012 SC2 Title Trust, seeks relief from the automatic stay with respect to the real property commonly known as 912 Oak Ridge Drive, Roseville, California (the "Property"). Movant has provided the Declaration of Alondra Barajas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Barajas Declaration states that there are 3 post-petition defaults, with a total of $7,291.56 in post-petition payments past due. Additionally, there are 3 pre-petition payments in default, with a total of $8,591.65 in pre-petition payments past due.

Debtor opposes the motion and states that she has filed a first amended Chapter 13 Plan to provide for the pre- and post-petition arrears. The amended plan was filed on September 20, 2016, and is scheduled for hearing on November 1, 2016.

Furthermore, the Declaration of Melissa Regala states that the Property is necessary for reorganization because it is the Debtor's place of business. Debtor states that she owns and operates a care home out of the Property and that this care home is the source of her income both to pay for her normal living expenses and to fund her Chapter 13 plan. Debtor further asserts that she was delayed in filing her first amended plan because the Internal Revenue Service filed a claim that was higher than it should have been since the IRS included estimated liabilities. The Debtor states that she has provided her tax returns to the IRS and expects the IRS to file an amended claim reducing the amount owed.

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). 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 there appears to be equity in the Property. It also appears that the Property is necessary to an effective reorganization because it is the source of Debtor's income to pay for both her normal living expenses and to fund her Chapter 13 plan. So there is no basis for relief under 11 U.S.C. § 362(d)(2). There also is no current basis for relief under 11 U.S.C. § 362(d)(1) since pre- and post-petition arrears will be cured in the Debtor's amended plan.

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

The court shall enter an appropriate minute order.

36. 16-25930-B-13 ANGELINA ROBINSON — MOTION TO EXTEND AUTOMATIC STAY
RS-1 Richard L. Sturdevant — O.S.T.
9-21-16 [13]

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 grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 21, 2016, after Debtor failed to make plan payments (case no. 13-34164, dkt. 148, 151). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor asserts that the previous case was filed in order to protect her real property and repay her debts in an organized manner. Debtor further asserts that her circumstances have changed because in the prior bankruptcy Debtor had foot surgery in October 2015, which rendered her unable to work and entitled her to workman's compensation benefits that were approximately 50% less than her regular income. This resulted in the Debtor's delinquency in plan payments. Debtor has recovered from her surgery, is now working full-full time, and believes her present plan will succeed.

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.