UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 15, 2016 at 1:00 p.m.

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1. 13-35804-B-13 BRENDA BRUESSARD — MOTION TO MODIFY PLAN
SS-7 Scott D. Shumaker — 10-11-16 [123]

Tentative Ruling: The Debtor's Motion for Order Confirming Fourth Modified chapter 13 Plan Filed October 11, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming properly account all payments made by the Debtor to date by stating the following: "The Debtor has paid a total of $16,111.00 to the Trustee through September 25, 2016, month 33. Commencing October 25, 2016, month 34, monthly plan payments shall be $849.00 for the remainder of the 60-month plan.

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

The court will enter an appropriate minute order.

2. 11-48623-B-13 KEVIN/CINDY PEREZ — MOTION FOR COMPENSATION FOR
PGM-3 Peter G. Macaluso — PETER G. MACALUSO, DEBTORS ATTORNEY(S)
10-14-16 [73]

Final Ruling: No appearance at the May 3, 2016, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtors since September 22, 2016, after substituting into this case from Hughes Financial Law. Hughes Financial Law 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 $3,500.00. Dkt. 29. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $900.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and the Declaration of Peter Macaluso and the Declaration of Kevin Perez and Cindy Perez in support of the services provided. Dkt. 73, 75, 76.

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 asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require the sale of real property and a portion of the Debtors' pool business. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of $750.00 instead of $1,440.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$900.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

3. 15-26933-B-13 PETE GARCIA
PGM-3 Peter G. Macaluso

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
9-12-16 [86]

Tentative Ruling: This matter was continued from November 1, 2016, to provide Wells Fargo Bank, N.A. additional time to revisit its calculations. The Objection to Notice of Mortgage Payment Change Filed by Wells Fargo Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc., Bear Sterns Mortgage Funding Trust 2006-AR2, Mortgage Pass-Through Certificates, Series 2006-AR2, As Serviced By Specialized Loan Servicing LLC, ("Wells Fargo") Filed April 27, 2016, was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Debtor objects to the Notice of Mortgage Payment Change filed by Wells Fargo Bank, N.A. ("Creditor"). Creditor seeks a mortgage payment increase from $516.58 to $623.68 plus shortage payment of $133.88 for a total monthly escrow obligation of $757.56. Debtor asserts that the new escrow obligation should be increased to only $623.88. The Debtor further asserts that the escrow deficiency is provided for in the plan arrears and that the escrow analysis should start at zero (0).

The Notice of Mortgage Payment Change filed April 27, 2016, and Proof of Claim No. 1 filed by the Creditor and the exhibits filed by the Debtor have been reviewed by the court.

The court will enter an appropriate minute order.

4.	16-26234-B-13 JPJ-1	ALLEN/ASHLEY WARRINGTON Scott D. Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-27-16 [24]

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

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

The Debtors have not filed amended Schedules I and J to show Debtor Allen Warrington's changes from self-employment to regularly waged employment with American Concrete Washout nor filed an amended Statement of Financial Affairs #4 to accurately reflect the Debtor's 2016 year-to-date income and #27 to list Ashley Warrington's daycare business. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed September 20, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

5. 16-22839-B-13 CHRISTOPHER/GINA BARNES MOTION TO CONFIRM PLAN
EAS-2 Edward A. Smith 10-3-16 [44]

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

The Motion to Confirm First Amended Chapter 13 Plan Dated October 3, 2016, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 3, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

6. 16-27241-B-13 KAREN HOVEY MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott D. Hughes 11-1-16 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 5, 2016, after Debtor failed to cure delinquency in plan payments (case no. 16-20397, dkt. 28). 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 to stop a trustee's sale on the Debtor's residence. Additionally, Debtor states that her situation has changed because in the prior case her husband's disability stopped and the loss of income resulted in the default in payments. However, since then the Debtor's husband has gained full-time employment at River Valley Care Center and part-time employment at Home Depot. The Debtor asserts that with these two new jobs, she believes that the 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 will enter an appropriate minute order.

7.	16-26242-B-13 JPJ-1	STEVEN/LINDA MAYNERICH Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-27-16 [23]

CONTINUED TO 12/13/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO VALUE COLLATERAL FOR CITIBANK, N.A.

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

The court will enter an appropriate minute order.

8. 16-26754-B-13 MICHAEL/SASHA KELLY — MOTION TO VALUE COLLATERAL OF CARFINANCE CAPITAL LLC
DNP-1 Debora N. Paul — 10-13-16 [8]

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

The Debtors' Motion to Value Collateral of Carfinance Capital LLC. (Also Doing Business as Carfinance.com and Flagship Credit Acceptance LLC.) 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 Carfinance Capital LLC. (also doing business as Carfinance.com and Flagship Credit Acceptance LLC.) at $7,000.00.

Debtors motion to value the secured claim of Carfinance Capital LLC. (also doing business as Carfinance.com and Flagship Credit Acceptance LLC.) ("Creditor") is accompanied by Debtors declaration. Debtors are the owners of a 2013 Dodge Journey ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,000.00 as of the petition filing date. The Debtors state that this valuation is based significant transmission problems, minor mechanical problems, and several dents to the external roof area of the Vehicle. 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 CarFinance Capital 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 October 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of $16,782.64 as stated in Claim No. 1. 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 $7,000.00. *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 will enter an appropriate minute order.

9. 16-23958-B-13 GRACE KENNEDY
Gary S. Saunders

MOTION TO CONFIRM PLAN
10-3-16 [44]

Tentative Ruling: The Motion to Confirm the Second Amended Chapter 13 Plan of Debtor 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 second amended plan.

First, the plan payment in the amount of $1,650.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,781.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the plan does not specify the monthly contract installment amount to Wells Fargo Home Mortgage in Class 1. Although the Debtor has indicated in his declaration that he is willing to make mortgage payment directly to Wells Fargo, the Debtor is not permitted to do so under the language of the form plan itself. Pursuant to Section 2.08(b) of the form plan, the trustee shall maintain all payments falling due after the filing of the case to the holder of each Class1 claim.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,750.00, 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 amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

10. 16-27061-B-13 DANIEL CEJA
KSR-1 Stephen N. Murphy

DEBRA WALDROP VS.
And #34

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
11-1-16 [9]

Final Ruling: No appearance at the November 15, 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).

The court's decision is to deny the motion without prejudice for reasons stated at Item #34.

The court will enter an appropriate minute order.

11.	16-26062-B-13 JPJ-1	NOMIE PATTON Eric John Schwab	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-27-16 [33]

CONTINUED TO 12/13/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO AVOID LIEN OF SUNLAN - 020105 LLC.

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

The court will enter an appropriate minute order.

12. 16-23964-B-13 RUDY RUBIO
MB-1 Michael Benavides

MOTION TO CONFIRM PLAN
10-3-16 [28]

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

The Debtor's Motion to Confirm Amended Plan Filed On or About October 3, 2016, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 3, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

13. 15-26967-B-13 JEREMIAH/SAMANTHA BAGULA MOTION TO MODIFY PLAN
MOH-2 Michael O'Dowd Hays 10-6-16 [55]

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 October 6, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

14. 15-23473-B-13 RODNEY/CHRISTINE HOLLAND MOTION TO MODIFY PLAN
BLG-5 Chad M. Johnson 9-23-16 [82]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on 9/23/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $450.00, which represents approximately 1/10 of one 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 plan cannot be effectively administered. The modified plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home Mortgage for the month of July 2016 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is therefore unable to fully comply with Section 2.08(b) of the plan.

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

The court will enter an appropriate minute order.

15. 14-32275-B-13 RAY/ROSE DEPRIEST
JPJ-2 W. Scott de Bie
Thru #16

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 (FILING FEE NOT PAID OR NOT REQUIRED), MOTION TO DISMISS CASE
9-19-16 [35]

Tentative Ruling: This matter is continued from October 25, 2016, to be heard in conjunction with the motion to modify plan at Item #16. The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was originally 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 was filed by the Debtor.

The court's decision is to not convert this Chapter 13 case to a Chapter 7 or dismiss this case since the Debtor has filed a modified plan that is confirmed at Item #16.

The Debtors have cured their delinquency in the amount of $848.00 as stated in the Declaration of Rose Ann DePriest. Furthermore, the modified plan resolves the delinquency of one payment in the amount of $424.00 and the plan pays allowed claimants at least as much as they would receive in a Chapter 7 proceeding.

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C.§ 1307(c). The motion is denied without prejudice and the case is not converted to a case under Chapter 7 or dismissed.

The court will enter an appropriate minute order.

16. 14-32275-B-13 RAY/ROSE DEPRIEST
SDB-1 W. Scott de Bie

MOTION TO MODIFY PLAN
10-11-16 [41]

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 October 11, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 16-24478-B-13 DANIEL/TRACY STYPA
FWP-1 Mary Ellen Terranella

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

Thru #18 and #35-36

The Opposition of First U.S. Community Credit Union to Debtors' 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). A written reply has been filed to the objection.

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

First U.S. Community Credit Union ("Movant") objects to confirmation of the plan that values its collateral at $0.00 with respect to a second-position deed of trust. The collateral is real property located at 4425 Kristen Lee Court, Placerville, California. The evidentiary hearing to value this collateral was held on November 14, 2016, and continued to the date and time of this confirmation hearing.

18. 16-24478-B-13 DANIEL/TRACY STYPA
JPJ-1 Mary Ellen Terranella

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

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

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

Chapter 13 Trustee ("Movant") objects to confirmation of the plan because feasibility depends on the granting of a motion to value collateral for First U.S. Community Credit Union and Wells Fargo Bank, N.A. The motion to value collateral for Wells Fargo has been granted at Item #36. Therefore, the only remaining issue is the motion to value collateral for First U.S. Community Credit Union.

First U.S. Community Credit Union objects to the valuation of its collateral at $0.00 with respect to a second-position deed of trust. The collateral is real property located at 4425 Kristen Lee Court, Placerville, California. The evidentiary hearing to value this collateral was held on November 14, 2016, and continued to the date and time of this confirmation hearing.

19. 15-25980-B-13 ROBERT/ANASTASIA LEE — MOTION TO APPROVE LOAN MODIFICATION
CK-3 Catherine King — 10-12-16 [32]

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

The Motion to Approve Loan Refinance 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 refinance requested.

Debtors seek court approval to incur post-petition credit from Sun West Mortgage Company ("Creditor"). Debtors have an interest in real property commonly known as 1228 Mussel Shoals Avenue, Shasta Lake, California ("Property"). Tri Counties Bank holds a claim secured by a recorded interest in the Property and Tri Counties Bank's claim is provided for in the plan at Class 4. The loan refinance with Creditor will provide a payoff of Tri Counties Bank. Dkt. 35, p. 2. Creditor has agreed to a loan refinance which will reduce Debtor's mortgage payment from the current $1,132.00 a month to $692.69 a month. The rate of interest on the loan will change to 3.75% and the principal amount owed on the loan will not be changed.

The motion is supported by the Declaration of Robert Lee and Anastasia Lee. 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 will enter an appropriate minute order.

20. 16-25881-B-13 JOHN JENKINS
Thru #21 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
10-17-16 [19]

Tentative Ruling: The JPMorgan Chase Bank, National Association'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 overrule the objection but deny confirmation of the plan for reasons stated at Item #21.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts $240,437.39 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed September 8, 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 will enter an appropriate minute order.

21. 16-25881-B-13 JOHN JENKINS
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-27-16 [22]

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

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

First, the Debtor did not appear at the meeting of creditors set for October 20, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,238.00, 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).

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

Fourth, the 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).

Fifth, according to Schedule J, the Debtor owes a domestic support obligation.

Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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

Seventh, the Debtor did not list three bankruptcies filed within the last 8 years: 16-50188, 13-31937, and 08-51694. All were filed in the Middle District of North Carolina. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed September 8, 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 will enter an appropriate minute order.

22. 16-21082-B-13 SERGIO DE LA CRUZ
RCO-1 Ronald W. Holland

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-14-16 [62]

EVERGREEN MONEYSOURCE MORTGAGE COMPANY VS.

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

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

Evergreen Moneysource Mortgage Company d/b/a Evergreen Home Loans ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 755 Jewell Avenue, Yuba City, California (the "Property"). Movant has provided the Declaration of Cloretta Black to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Black Declaration states that there are 5 post-petition defaults, with a total of $5,219.50 in post-petition payments past due. Additionally, there are 5 pre-petition payments in default, with a total of $4,908.40 in pre-petition payments past due.

Opposition has been filed by the Debtor stating that his second modified plan filed September 26, 2016, will cure the alleged default and nullify the basis for the relief from stay. However, the confirmation hearing of the second modified plan was heard on November 8, 2016, and confirmation of the plan was denied.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $143,853.12 as stated in the Motion and Form EDC 3-468-INST. The value of the Property is determined to be $140,000.00 as stated in Schedules A and D filed by Debtor.

The Trustee has indicated its non-opposition to the Motion.

Discussion

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

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

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

Attorneys' Fees and Costs Requested

Although requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees and costs in connection with this Motion. Movant is not awarded any attorneys' fees.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

23.	16-25086-B-13 PLG-1	FLOYDETTE JAMES Steven A. Alpert	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 10-14-16 [22]

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

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

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at $0.00.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1752 Beale Circle, Suisun City, California ("Property"). Debtor seeks to value the Property at a fair market value of $305,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4-1 filed by Wells Fargo Bank, N.A. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $405,142.99. Creditor's second deed of trust secures a claim with a balance of approximately $36,261.86. 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 will enter an appropriate minute order.

24. 16-26193-B-13 KATHERINE MINNICH
JPJ-1 Christian J. Younger

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-27-16 [15]

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

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

The Trustee objects to confirmation of the plan on the ground that the Debtor's projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). According to the Trustee, the Debtor overstated her mandatory retirement expense under Form 122C-2, Line #17 at $982.48 when Schedule I shows a mandatory retirement expense of only $762.48.

The Debtor has filed a response stating that Line #17 of the form is not limited to mandatory retirement expenses. The Debtor asserts that the $982.48 listed at Line #17 includes a $120.00 payroll deduction for parking and a $100.00 traveling expense required for her employment. The Debtor has not submitted any declaration or exhibits in support of her response.

25. 16-22995-B-13 WALLEN YEP
JPJ-3 Jonathan D. Matthews

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
10-3-16 [52]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted on the grounds that the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) and that there is $26,160.00 in non-exempt property for liquidation.

The Debtor has filed a response stating that an amended Chapter 13 plan was filed on November 5, 2016. The Debtor also states that he is working with Wells Fargo to modify the loan on his real property located in Vallejo, California.

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has filed an amended plan and therefore has not failed to prosecute this case to cause unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). Additionally, the Debtor is working with Wells Fargo on a loan modification. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

26. 16-24195-B-13 JESSICA NADOLSKI MOTION TO CONFIRM PLAN
DE-1 Robert C. Bowman 9-26-16 [32]

Tentative Ruling: The Motion to Confirm 1st 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.

First, the plan filed September 26, 2016, was not filed as a separate document but rather as an attachment to the Motion to Confirm 1st Amended Plan. The motion does not comply with Local Bankr. R. 3015-1(d)(1).

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's disposable income is not being applied to make payments to unsecured creditors. The amended Calculation of Disposable Income (Form 122C-2) filed on July 27, 2016, shows that the Debtor's monthly disposable income is $983.75 and the Debtor must pay no less than $59,025.00 to unsecured non-priority creditors. The plan proposes to pay 0% to unsecured non-priority claims. The plan will pay a dividend of approximately 38% to unsecured non-priority claims, but this is only $49,173.57.

Third, the Debtor's motion states that the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys has been filed with the court, but this form appears nowhere on the court's docket. Should the Debtor seek attorney's fees or costs, such a request must be approved by separate motion pursuant to 11 U.S.C. § 330.

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

The court will enter an appropriate minute order.

27. 16-25895-B-13 DMR-1 **Thru #31**

EARL/JENNIFER MCFALL
Len ReidReynoso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SANDRA NELSON
10-12-16 [37]

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

The court's decision is to overrule the objection as moot and *sua sponte* dismiss this case on the basis that Debtors Earl and Jennifer McFall ("Debtors") are not eligible to be chapter 13 debtors.

Chapter 13 eligibility focuses on the amount of debt held by a debtor at the commencement of the bankruptcy case. The relevant part of § 109(e) states that "only . . . an individual with regular income and such individual's spouse, . . . that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200 may be [debtors] under chapter 13 of [Title 11]." 11 U.S.C. § 109(e). Chapter 13 eligibility is normally determined as of the petition date by a review of a debtor's originally filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, if a bad-faith objection is raised by a party in interest, the bankruptcy court should look past the schedules so long as the debt computation for eligibility is determined as of the petition date. *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006). Eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

The petition date here is September 1, 2016, which means it is the debt that existed **on that date** that determines whether the Debtors are eligible under § 109(e) to be Chapter 13 debtors. The court notes that although it is not ruling on the issue of good faith, the Chapter 13 Trustee ("Trustee") and Sandra Nelson have filed a good faith objections to confirmation. Dkts. 37, 44.[1] The Trustee's good faith objection is based on the Debtors' schedules and refers to the debt owed to Ms. Nelson listed in the schedules. Therefore, in making the § 109(e) eligibility determination, the court will look beyond the Debtors' schedules. *See In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016) (looking beyond schedules to determine eligibility based on bad faith objection to confirmation).

The significant (and fatal) problem with the Debtors' eligibility in this case relates to Ms. Nelson's judgment and judicial lien. Ms. Nelson recorded an abstract of judgment with the Sacramento County Recorder on August 23, 2016, after she obtained a $150,000.000 civil judgment against the Debtors on July 25, 2016, and before the Debtors filed their Chapter 13 petition on September 1, 2016.[2] In that regard, the

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[1] Dan Morehead adopts the Trustee's objections. Dkt. 41.

[2] The recorded abstract of judgment the Debtors submitted as an exhibit to their motion to avoid Ms. Nelson's judicial lien reflects that on July 25, 2016, the United States District Court for the Eastern District of California entered a $150,000.00 judgment in favor of Ms. Nelson and against the Debtors. Dkt. 19, Ex. F. Schedule E/F identifies that civil action as "Civil Case No. 2:15-cv-02006-CKD." The court takes judicial notice of a civil action filed in the United States District Court for the Eastern District of California captioned *Sandra Nelson v. Jennifer McFall and Earl McFall*, case no. 2:15-cv-02006-MCE-CKD, in which an order granting summary judgment for Ms. Nelson and a $150,000.00 judgment in favor of Ms. Nelson and against the

Debtors' Schedule E/F incorrectly lists the debt owed to Ms. Nelson as unsecured in the amount of $46,830.00 when, in fact, **on the petition date of September 1, 2016**, the debt was secured by the recorded abstract of judgment which created a $150,000.00 judicial lien on the Debtors' property. *See* Cal. Code Civ. P. § 674; *County of Humboldt v. Grover (In re Cummins)*, 656 F.2d 1262, 1265 n. 3 (9th Cir. 1981).[3]

Since Ms. Nelson's claim is secured, and was secured on the petition date, the debt should have been listed on Schedule D and not Schedule E/F and it should have been listed in the amount of $150,000.00 not $46,830.00. The amount of noncontingent and liquidated secured debt currently listed on the Debtors' Schedule D totals $1,159,720.00. Adding Ms. Nelson's secured debt of $150,000.00 to $1,159,720.00 results in a total noncontingent and liquidated secured debt of $1,309,720.00.[4] That amount exceeds the current statutory debt limit of $1,184,200.00 under § 109(e) which means the Debtors are ineligible to be Chapter 13 debtors.

Alternatively, even assuming that the debt owed to Ms. Nelson's is unsecured, the Debtors' noncontingent and liquidated unsecured debt would then exceed the current unsecured debt limit under § 109(e) of $394,725.00. The amount of unsecured debt currently listed on the Debtors' Schedule E/F totals $393,848.00, which includes Ms. Nelson's judgment at the incorrect amount of $46,830.00. When the $103,170.00 difference is added to the currently scheduled $46,830.00, total noncontingent and liquidated unsecured debt is $497,018.00. The Debtors would again be ineligible for Chapter 13 relief.

Based on the foregoing, the court concludes that either the Debtors' secured or unsecured debt exceeds the statutory cap under § 109(e) which means the Debtors are, as a matter of law, not eligible to be Chapter 13 debtors. Therefore, the court will order this case dismissed and the objection to confirmation will be overruled as moot.

The court will enter an appropriate minute order.

Debtors were both entered on July 25, 2016. Dist. Ct. Dkts. 25, 26.

[3] The Debtors' schedule Ms. Nelson's debt as unsecured at $46,830.00 and they simultaneously assert the same debt is secured by a $150,000.00 judicial lien which they have moved to avoid. Dkt. 17, ¶ 9. The Debtors' inconsistent positions are, at best, disingenuous and border on the frivolous.

[4] Although the Debtors appealed the $150,000.00 judgment and in this case they state they disagree with the debt amount, disputed debts are not excluded from the eligibility analysis. *See Sylvester v. Dow Jones & Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (9th Cir. BAP 1982); *see also Nicholes v. Johnny Appleseed of Wash. (In re Nicholes)*, 184 B.R. 82, 90-91 (9th Cir. BAP 1995). The Debtors also acknowledge that the debt established by the judgment is noncontingent and liquidated inasmuch as the "contingent" and "unliquidated" boxes associated with the judgment debt are not checked on the schedules. In any case, the Debtors' liability on the debt created by the judgment is noncontingent because but for the automatic stay that arose when the petition was filed (and which will terminate when this case is dismissed) the appeal does not prevent Ms. Nelson from enforcing the judgment, *see Sui v. Marshack*, 2016 WL 4073716 at *3 (9th Cir. BAP 2016) (citing *Bennett v. Gemmill (In re Combined Metals Reduction Co.)*, 557 F.2d 179, 190 (9th Cir. 1977)), and the judgment itself liquidates the debt.

28. 16-25895-B-13 EARL/JENNIFER MCFALL — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Len ReidReynoso — 10-10-16 [31]

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 court's decision is to overrule the objection as moot, the case having been sua sponte dismissed for reasons stated at Item #27.

The court will enter an appropriate minute order.

29. 16-25895-B-13 EARL/JENNIFER MCFALL — MOTION TO AVOID LIEN OF SANDRA NELSON
LRR-1 Len ReidReynoso — 9-29-16 [17]

Tentative Ruling: The Motion to Avoid the Fixing of Lien Pursuant to 11 U.S.C. § 522(f)(2)(A) & 9014-1(f)(1) or (f)(2) 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 was filed by Sandra Nelson

The court's decision is to deny the motion as moot, the case having been sua sponte dismissed for reasons stated at Item #27.

The court will enter an appropriate minute order.

30. 16-25895-B-13 EARL/JENNIFER MCFALL — OBJECTION TO CLAIM OF SANDRA NELSON, CLAIM NUMBER 1
LRR-2 Len ReidReynoso — 9-29-16 [22]

Tentative Ruling: The Debtor's [sic] Objection to Allowance of Claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to overrule the objection to claim as moot, the case having been sua sponte dismissed for reasons stated at Item #27.

The court will enter an appropriate minute order.

31. 16-25895-B-13 EARL/JENNIFER MCFALL — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAN MOREHEAD
PCB-1 Len ReidReynoso — 10-13-16 [41]

Tentative Ruling: The Objection of Creditor Dan Morehead 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 court's decision is to overrule the objection as moot, the case having been sua sponte dismissed for reasons stated at Item #27.

The court will enter an appropriate minute order.

32. 11-34498-B-13 ROY/JEANETTE HARRIS
Peter G. Macaluso

OPPOSITION TO TRUSTEE'S FINAL REPORT AND ACCOUNT FILED BY MONIQUE MARQAUX
9-16-16 [92]

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

The Objection to Trustee's Final Report and Account filed by Monique Margaux has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). A person wishing to object to the Trustee's Final Report and Account must file a written objection within 33 days of the date of the Notice. Monique Margaux filed her objection within 33 days of the Trustee's Final Report and Account dated September 16, 2016.

The court's decision is to overrule the objection.

Monique Margaux ("Creditor") provides no evidence to support any payment or accounting error made by the Chapter 13 Trustee. Instead, Creditor's objection is based entirely on her allegations raised in the adversary proceeding *Margaux v. Harris et al* that the parties stipulated to dismiss with prejudice in its entirety. Case no. 11-02635, dkt. 39. The Creditor's current objection does not state with particularity the grounds for relief sought. Therefore, the objection to the Trustee's Final Report and Account is overruled.

The court will enter an appropriate minute order.

33. 16-27293-B-13 ELLE RUBINGER
MS-2 Mark Shmorgon

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
11-2-16 [14]

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 October 12, 2016, after Debtor failed to cure delinquency in plan payments (case no. 13-30448, dkt. 104). 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 to save her residence and vehicle. Additionally, the Debtor's circumstances have changed since in the prior case the Debtor's son experienced a divorce and custody battle between his estranged wife over their three children. The Debtor states that she was required to divert funds from her plan payments in order to help her son prevail in the legal battle at the expense of her case being dismissed. The Debtor believes that she will succeed in her current plan since the legal battle is behind her. The Debtor had been in the plan for over three years prior to its dismissal.

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 will enter an appropriate minute order.

34. 16-27061-B-13 DANIEL CEJA
SNM-1 Stephen N. Murphy
And #10

MOTION TO IMPOSE AUTOMATIC STAY
O.S.T.
11-4-16 [14]

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 moves to invoke the automatic stay of 11 U.S.C. § 362(a) pursuant to 11 U.S.C. § 362(c)(4)(B). This is the Debtor's third bankruptcy petition pending in the past 12 months. The first case was dismissed on May 23, 2016 (case no. 16-22922) for failure to timely file documents. Dkt. 13. The second case was dismissed on October 5, 2016 (case no. 16-23672) for delinquency in plan payments and failure to file and confirm an amended plan. Dkt. 40. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the stay take effect if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if a debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(4)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(4)(D).

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

The Debtor asserts that the previous plans were filed in order to save his residence from foreclosure. The first plan had failed since the Debtor had filed pro se. The second plan had failed because the Debtor had difficulty communicating with his legal counsel due to suffering severe head and brain trauma from a car accident. The Debtor states that his circumstances have changed and that he will succeed in the present plan because he has retained new legal counsel and has resumed his self-employment as a mechanic and concrete pumper. This income is further supplemented by rental income and his non-filing spouse's income from disability.

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 will enter an appropriate minute order.

35. 16-24478-B-13 DANIEL/TRACY STYPA
MET-1 Mary Ellen Terranella
Thru #36
See Also #17-18

CONTINUED EVIDENTIARY HEARING RE: MOTION TO VALUE COLLATERAL OF FIRST US COMMUNITY BANK
8-19-16 [15]

Tentative Ruling: The court issues no tentative ruling. The court will read its decision on the record in open court.

36. 16-24478-B-13 DANIEL/TRACY STYPA
MET-2 Mary Ellen Terranella

CONTINUED EVIDENTIARY HEARING RE: MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
8-19-16 [20]

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

The Motion for Order Valuing 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 Wells Fargo Bank, N.A. at $0.00.

The Debtors seek to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") on a third deed of trust as having a value of $0.00. The court has reviewed the Claims Registry for this bankruptcy case and it appears that Claim No. 10-1 filed by Wells Fargo Bank, N.A. is the claim that is the subject of the present motion. The proof of claim lists the $17,542.88 claim as unsecured.

Because the Creditor's claim is unsecured, the 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), with respect to only the claim of Wells Fargo Bank, N.A. and that the claim on the third deed of trust shall be deemed as a general unsecured claim without priority, is granted.

The valuation of real property located at 4425 Kristen Lee Court, Placerville, California, will be determined at Item #35.

The court will enter an appropriate minute order.