

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 10, 2017 at 1:00 p.m.

1. [09-29207](#)-B-13 MARIA LEON MOTION TO AVOID LIEN OF
ADR-6 Justin K. Kuneý BENEFICIAL CALIFORNIA INC
12-26-16 [88]

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of Beneficial California Inc. ("Creditor") against the Debtor's property commonly known as 7840 Cavalier Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,661.12. An abstract of judgment was recorded with Sacramento County on March 30, 2009, which encumbers the Property. All other liens recorded against the Property total \$438,896.98.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$228,500.00 as of the date of the petition. Dkt. 1.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C. Dkt. 92.

After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349 (b) (1) (B).

The court will enter an appropriate minute order.

January 10, 2017 at 1:00 p.m.

2. [16-27611](#)-B-13 MICHAEL/ESTHER SPEARMAN OBJECTION TO CONFIRMATION OF
AP-1 Eric John Schwab PLAN BY U.S. BANK, N.A.
Thru #3 12-20-16 [[18](#)]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 deny confirmation of the plan.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$41,831.00 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed November 17, 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.

3. [16-27611](#)-B-13 MICHAEL/ESTHER SPEARMAN OBJECTION TO CONFIRMATION OF
JPJ-1 Eric John Schwab PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-21-16 [[21](#)]

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' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtors' monthly disposable income is \$4,592.32 and that the Debtors must pay no less than \$275,539.20 to unsecured non-priority creditors. The plan will pay only \$2,607.95 to unsecured non-priority creditors.

The plan filed November 17, 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 are 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.

4. [13-24213](#)-B-13 KAWATHA GETER AND MOTION FOR COMPENSATION BY THE
CYB-2 LATANAYA JOHNSON-GETER LAW OFFICE OF BROOKS AND
Candace Y. Brooks CARPENTER FOR CANDACE Y.
BROOKS, DEBTORS' ATTORNEY(S)
12-20-16 [[62](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Application for Attorney Fees 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 for compensation.

FEES AND COSTS REQUESTED

Candace Y. Brooks ("Applicant"), the attorney to Chapter 13 Debtors, makes a request for the allowance of \$2,125.00 in fees, of which \$1,000.00 is to be drawn directly from the attorney trust account as the \$1,000.00 already paid by the Debtors to the Applicant and the remaining \$1,125.00 to be paid through the plan by the Chapter 13 Trustee. The Debtors had opted out of the Guidelines with their original attorney Michael D. Croddy (dkt. 1, p. 49). The order of the court approving substitution of Applicant was entered on December 6, 2016. Dkt. 55.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 65.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably

skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtors and bankruptcy estate and reasonable.

Applicant is allowed the following amounts as compensation to this professional in this case:

Fees (drawn from attorney trust account)	\$1,000.00
Fees (paid by Trustee)	\$1,125.00
Total	\$2,125.00

The court will enter an appropriate minute order.

5. [16-21514](#)-B-13 CHERRONE PETERSON
PGM-3 Peter G. Macaluso

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 4
11-21-16 [[93](#)]

Final Ruling: No appearance at the January 10, 2017, hearing is required.

The Objection to Claim of Cavalry SPV I, LLC Filed on April 14, 2016, Claim Number 4 and Attorney Fees in Defense Thereof has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4 of Cavalry SPV I, LLC, disallow the claim in its entirety, and deny the request for attorney's fees.

Cherrone Peterson, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 4. The claim is asserted to be in the amount of \$650.35. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). The Objector asserts that Creditor has made no showing of a payment history or proof of last transaction date. However, Objector is incorrect in this regard because Claim No. 4 does provide a "Statement of Account" stating the last payment date.

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about January 27, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 11, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Attorney's Fees Requested

Although requested, Objector has not stated either a contractual or statutory basis for the award of attorney's fees in connection with this Objection. Objector is not awarded any attorney's fees.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

6. [12-42115](#)-B-13 IZABELA GIBALEWICZ
LDD-2 Linda D. Deos

MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE
INJUNCTION
12-6-16 [[58](#)]

Final Ruling: No appearance at the January 10, 2017, hearing is required. This matter is continued to February 7, 2017, at 1:00 p.m. per stipulation entered December 23, 2016.

The court will enter an appropriate minute order.

7. [16-27317](#)-B-13 BRIAN/KATHY BETLAN
APN-1 David Foyil
Thru #8

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
12-16-16 [[20](#)]

Tentative Ruling: The Secured Creditor, Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services' Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 overrule the objection as moot and deny confirmation of the plan for reasons stated at Item #8.

Feasibility depends on the granting of a motion to value collateral for Wells Fargo Dealer Service. That motion was heard and denied without prejudice on January 3, 2017.

The plan filed November 2, 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.

8. [16-27317](#)-B-13 BRIAN/KATHY BETLAN
JPJ-1 David Foyil

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-21-16 [[30](#)]

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). 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, feasibility depends on the granting of a motion to value collateral for Wells Fargo Dealer Service. That motion was heard and denied without prejudice on January 3, 2017.

Second, the Debtors have certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition. Therefore, the Debtors are not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Third, the Debtors have 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 Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

The plan filed November 2, 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.

9. [16-25930](#)-B-13 ANGELINA ROBINSON
JPJ-2 Richard L. Sturdevant

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-21-16 [[41](#)]

Final Ruling: No appearance at the January 10, 2017, 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 exemptions are disallowed in their 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 waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.

10. [16-27331](#)-B-13 DAVID/DANETTE CARTER
JPJ-1 Cindy Lee Hill

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-21-16 [[13](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and 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 Calculation of Disposable Income (Form 122C-1) includes an improper expense at line 5 for ordinary and necessary business expenses of \$11,616.00. A debtor may not deduct business expenses from gross receipts to calculate current monthly income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008). Based on the gross receipts of \$13,450.00, Debtors' annualized current monthly income is \$161,400.00, which is greater than the applicable median family income of \$83,012.00. In order to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B), Debtors must complete Forms 122C-1 and C-2 in their entirety.

The plan filed November 3, 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 are 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.

Final Ruling: No appearance at the January 10, 2017, hearing is required.

The Motion to Value the Secured Claim of Ditech Financial 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 Ditech Financial LLC at \$0.00.

Debtor's motion to value the secured claim of Ditech Financial LLC ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2819 Kenco Avenue, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of \$155,000.00 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.

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 \$169,938.40. Creditor's second deed of trust secures a claim with a balance of approximately \$43,047.76. 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.

Tentative Ruling: The Motion of Debtors for Authorization to Sell Real Property of Debtors, Free and Clear of Liens 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 defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 45 Ramon Drive, Galt, California ("Property").

The proposed purchaser of the property Donald R. Hanna has agreed to purchase the Property for \$260,000.00. There are three mortgages totaling approximately \$232,000.00 against the property and the Debtor anticipates receiving sale proceeds of no more than \$25,000.00. The debtor's declaration states his willingness to pay the net proceeds to the Chapter 13 Trustee minus \$1,500.00 to cover moving costs and any small tax consequences.

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

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

The court will enter an appropriate minute order.

Tentative Ruling: The Debtor's Motion to Confirm First Amended Chapter 13 Plan Filed November 29, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Post-petition installments are due to Selene Finance, LP ("Creditor") for the months of July 2016 to November 2016. Creditor was originally listed in Class 4 of the plan filed June 17, 2016, and therefore the Trustee made no post-petition installments. The amended plan filed November 29, 2016, lists Creditor in Class 1. The Trustee currently lacks sufficient funds to bring the post-petition installments current. Additionally, the Debtor did not make the plan payment due on November 25, 2016, until December 7, 2016. The amended plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee cannot fully comply with § 2.08(b) of the plan.

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.

14. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE MOTION TO MODIFY PLAN
CK-4 NASH 11-23-16 [[97](#)]
Catherine King

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

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

First, the plan will take approximately 67 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).

Second, the plan payment in the amount of \$5,000.00 for six months and \$6,673.83 for twelve months 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 \$7,290.50. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan does not specify a cure of post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to America's Servicing Company listed in Class 1. The Trustee is unable to fully comply with § 2.08(b) of the plan.

Fourth, the plan cannot be fully assessed for feasibility or effectively administered because the treatment of the secured claim of America's Servicing Company is unclear. The loan is listed in both Class 1 and Class 4 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. [16-23958](#)-B-13 GRACE KENNEDY
Gary S. Saunders

MOTION TO CONFIRM PLAN
11-22-16 [[62](#)]

DEBTOR DISMISSED: 11/30/2016

Final Ruling: No appearance at the January 10, 2017, hearing is required. This case was dismissed on November 30, 2016. The motion to confirm plan is dismissed as moot.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the January 10, 2017, hearing is required.

The Motion to Authorize the Debtor to Incur Post-Petition Debt 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 and authorize the Debtor to incur post-petition debt.

Debtor seeks permission to incur post-petition debt to re-finance his primary residence located at 11740 Talofa Drive, Redding, California. The debt incurred is in the estimated amount of \$255,000.00 through finance company Placer Title Company ("Creditor"). Incurring this debt will provide a \$24,400.00 payout to the Debtor and will completely payoff the Chapter 13 bankruptcy. The Debtor will pay the Creditor outside of bankruptcy.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

17. [16-25763](#)-B-13 CRYSTAL COULSTON
MR-1 Matin Rajabov

AMENDED MOTION TO CONFIRM PLAN
11-28-16 [[46](#)]

DEBTOR DISMISSED: 12/19/2016

Final Ruling: No appearance at the January 10, 2017, hearing is required. This case was dismissed on December 19, 2016. The motion to confirm plan is dismissed as moot.

The court will enter an appropriate minute order.

18. [15-29773](#)-B-13 CHARLES HUGHES AND VIRA MOTION FOR COMPENSATION FOR
PGM-6 EISON PETER G. MACALUSO, DEBTORS'
Peter G. Macaluso ATTORNEY
12-7-16 [[88](#)]

Final Ruling: No appearance at the January 10, 2016, hearing is required.

The Application for Additional 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

As part of confirmation of the Debtors' Chapter 13 plan, Peter G. Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 54. Applicant now seeks additional compensation in the amount of \$2,235.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 91.

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

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would receive a trial loan modification and a permanent loan modification that would require modification of the confirmed plan. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	\$2,235.00
Additional Costs and Expenses	\$ 0.00

The court will enter an appropriate minute order.

19. [16-27481](#)-B-13 ARMANDA CASIAS
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-21-16 [[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.

First, the claim of Deutsche Bank National Trust Company is misclassified as a Class 1 claim. The pre-written language of the form plan at Section 2.08(c) states, "Other than to cure any arrearage, this plan does not modify Class 1 claims." The Additional Provisions of the Debtor's plan, however, states that the creditor will receive "adequate protection" payments of \$1,884.00 per month pending the approval of a loan modification. Because the Additional Provisions specifically state that the creditor will receive "adequate protection" payments instead of ongoing monthly contractual payments, the plan modifies the claim, which is impermissible under 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). Because this is an impermissible modification under § 1322(b)(2), this court does not allow additional provisions to provide for "adequate protection" to a creditor whose claim is secured by a deed of trust recorded against the Debtor's principal residence absent the creditor's express written consent.

Second, feasibility depends on the granting of a motion to avoid lien held by Golden One Credit Union. That motion was heard and granted on January 3, 2017.

For the first reason stated above, the plan filed November 10, 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 will enter an appropriate minute order.

20. [15-25582](#)-B-13 ASHWANI/ASHWANI MAYER CONTINUED PRE-TRIAL CONFERENCE
[15-2188](#) RE: COMPLAINT TO DETERMINE
FRESHKO PRODUCE SERVICES, INC. DISCHARGEABILITY OF DEBT
V. MAYER 9-23-15 [[1](#)]
Thru #21

COURT WILL HEAR ARGUMENT AND CONTINUE THE MATTER TO 1/24/16 AT 1:00 P.M. AT WHICH TIME A DECISION WILL BE READ ON THE RECORD.

21. [15-25582](#)-B-13 ASHWANI/ASHWANI MAYER MOTION FOR SUMMARY JUDGMENT
[15-2188](#) RJR-2 AND/OR MOTION FOR SUMMARY
FRESHKO PRODUCE SERVICES, INC. ADJUDICATION OF CLAIMS AGAINST
V. MAYER DEFENDANT
11-30-16 [[47](#)]

COURT WILL HEAR ARGUMENT AND CONTINUE THE MATTER TO 1/24/16 AT 1:00 P.M. AT WHICH TIME A DECISION WILL BE READ ON THE RECORD.

22. [16-27483](#)-B-13 RICHARD/GRACE HINDES
AP-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
12-22-16 [[15](#)]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 deny confirmation of the plan.

The objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$25,330.63 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed November 10, 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.

23. [16-25492](#)-B-13 JAMES STRAIN MOTION TO CONFIRM PLAN
MJD-1 Scott J. Sagaria 11-17-16 [[26](#)]

Final Ruling: No appearance at the January 10, 2017, hearing is required.

The Debtor's Motion to Confirm First Amended Chapter 13 Plan 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 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 November 17, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

24. [16-25992](#)-B-13 EMANUEL/ELIZABETH
GG-2 RODRIGUES
Thru #25 Gerald B. Glazer

MOTION TO RECONSIDER
12-27-16 [[32](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Reconsider Motion for Order Valuing Collateral of CFAM Financial Services, LLC (GG-1) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 to reconsider the motion for order valuing collateral of CFAM Financial Services, LLC.

The Debtors request reconsideration of the court's order denying the motion to value collateral of CFAM Financial Services, LLC. In its order dated December 13, 2016, the court was not persuaded that the Debtors' 2010 Toyota Camry ("Vehicle") had a valuation of \$7,342.00 because this valuation was based on Kelley Blue Book's "private party" value. Dkt. 17, exh. A.

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). In other words, the starting point is the retail value – not the private party value or the wholesale price – from which downward adjustments are made to arrive at a replacement value that takes into account the age, mileage, and condition of the vehicle. *In re Lopez*, 2011 Bankr. LEXIS 5658, 13, 15 (Bankr. E.D. Cal. 2011).

Here, the retail price of the Vehicle based on Debtors' exhibits is \$9,722.00 (and not \$9,422.00 as stated in the Debtors' motion and declaration). Dkt. 34, p. 5. As stated in the Declaration of Elizabeth Rodrigues, the Vehicle has approximately 114,000 miles and the body has multiple dents and scratches. Dkt. 35. Adjustments for the age and condition of the car are to be made downward from \$9,722.00 to determine the replacement value.

Additionally, the Debtors' reliance on footnote 3 of *In re Lopez* to support the use of private party value is misplaced. That footnote cites to *Midwest Reg'l Credit Union v. De Anda-Ramirez (In re De Anda-Ramirez)*, 359 B.R. 794 (10th Cir. BAP 2007), whereby the 10th Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court's use of private party value given the unique evidence presented. In that case, the debtors provided evidence that their vehicle had twice the normal mileage for a car of its age to support their contention that private party value may be appropriate. *Id.* at 798. The Debtors in this case provide no evidence that their Vehicle is in such unique condition to warrant the court's use of private party value. Moreover, while *In re Lopez* may be persuasive for this court in some respects, it is not binding.

Based on the evidence presented in this case, the court determines that the Vehicle has a replacement value of \$8,722.00, which takes into account the multiple dents and scratches to the body of the Vehicle. 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.

25. [16-25992](#)-B-13 EMANUEL/ELIZABETH
JPJ-1 RODRIGUES
Gerald B. Glazer

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
10-7-16 [[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 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.

Feasibility depends on the granting of a motion to value collateral of Santander Consumer USA/CFAM Financial Services, which holds as its collateral a 2010 Toyota Camry. That motion to value was denied without prejudice in the court's order dated December 13, 2016. Dkt. 29. However, the court granted the Debtors' motion to reconsider at Item #25 valuing the vehicle at \$8,722.00. This would require the Debtors to amend their plan.

The plan filed September 7, 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 are 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.

26. [11-34498](#)-B-13 ROY/JEANETTE HARRIS
Peter G. Macaluso

MOTION TO RECONSIDER
11-28-16 [[107](#)]

Final Ruling: No appearance at the January 10, 2017, hearing is required.

The motion for reconsideration was not submitted pursuant to Local Bankruptcy Rule 9014-1(f)(2) nor was it set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Additionally, it does not appear that the Debtors or their attorney were served. This motion is removed from calendar.

The court will enter an appropriate minute order.

27. [16-27045](#)-B-13 CARLOS MEJIA
JPJ-1 Scott J. Sagaria

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
12-8-16 [[13](#)]

Tentative Ruling: This matter was continued from January 3, 2017, in order to be heard after the continued meeting of creditors held on January 5, 2017. The Objection to Confirmation of the Chapter 13 Plan was originally 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, deny the motion to dismiss, and confirm the plan.

The Debtor failed to appear at the duly noticed first meeting of creditors set for December 1, 2016, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to January 5, 2017, and the Debtor and his counsel appeared. The meeting concluded as to the Debtor.

The plan filed October 24, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

The court will enter an appropriate minute order.