UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: March 5, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 5, 2019 at 1:00 p.m.

1.	18-26800-B-13 PLG-2	MICHAEL/EMMA POST Steven A. Alpert	MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE FOR MICHAEL G. POST AND/OR MOTION FOR CONTINUED ADMINISTRATION OF CASE 1-29-19 [32]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to substitute Joint Debtor to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Joint Debtor Emma Post gives notice of the death of her husband Debtor Michael Post and requests the court to substitute Emma Post in place of Michael Post for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(a) requires counsel for the debtor, or the party to be appointed as the representative or successor of the deceased debtor, to file a Notice of Death within 60 days of the death of the debtor. Subpart (a) references Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025. In reference to whether dismissal is mandatory, the Ninth Circuit has noted:

> Rule 25(a)(1) uses the phrase "must be dismissed," but does not specify whether the dismissal "must" be with prejudice. Defendants insist that "must be dismissed" always means with prejudice, so the district court abused its discretion in permitting Zanowick to dodge the Rule 25 bullet through voluntary dismissal. Unfortunately for defendants, the "history of Rule 25(a) and Rule 6(b) makes it clear that the 90 day time period was not intended to act as a bar to otherwise meritorious actions, and extensions of the period may be liberally granted." *Cont'l Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (citation omitted); *see also United States v. Miller Bros. Constr. Co.*, 505 F.2d 1031, 1035 (10th Cir. 1974) (stating that under Rule 25, a "discretionary extension should be liberally granted absent a showing of bad faith on the part of the movant for

> substitution or undue prejudice to other parties to the action"); 7C Charles Alan Wright et al., Federal Practice and Procedure § 1955 (3d ed. 2017) ("Dismissal is not mandatory, despite the use of the word 'must' in the amended rule.").

Zanowick v. Baxter Healthcare Corp., 850 F.3d 1090, 1094 (9th Cir. 2017) (internal citations omitted).

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Emma Post for Michael Post as successor-in-interest and to waive the § 1328 and financial management requirements for Michael Post. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

2.	18-27902-B-13 JPJ-1	PAUL FISHER Chad M. Johnson	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-14-19 [27]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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).

The plan filed January 10, 2019, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

3.	18-26104-B-13 FF-2	VERNON/JAMIE JIMMERSON Gary Ray Fraley	MOTION TO CONFIRM PLAN 1-15-19 [37]

No Ruling

4.	19-20204-B-13 MJD-1	MARY SIMPSON Matthew J. DeCaminada	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1-1 1-17-19 [9]

Final Ruling

The objection 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. 1-1 of Cavalry SPV, LLC and the claim is disallowed in its entirety.

Mary Simpson, the Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $22,711.45. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

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 Objector's exhibits, the last payment was received on or about January 5, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 14, 2019, 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).

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

5. 19-20007-B-13 NICHOLAS BONANNO — AMENDED OBJECTION TO CONFIRMATION OF PLAN BY THE SOCOTRA OPPORTUNITY FUND, LLC 2-15-19 [28]
GLF-1 Marc Voisenat
Thru #6

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot in light of the ruling at Item #6. Alternatively, the objection by secured creditor Socotra Opportunity Fund, LLC ("Creditor"), will be sustained if the objections in Item #6 are satisfied. Creditor's secured claim is fully-matured, having matured prepetition. Creditor's secured claim is therefore misclassified in Class 1. Creditor's entire claim should be included in Class 2. Doing so, however, renders the plan not feasible based on the Debtor's proposed plan payment when compared with Schedules I/J. And to the extent the plan proposes no payments to Creditor, the plan is not confirmable because there is no monthly dividend to the Creditor when properly included in Class 2.

The plan filed January 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

6. 19-20007-B-13 NICHOLAS BONANNO — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-13-19 [23]
JPJ-1 Marc Voisenat

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor has not filed detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's net income of $1,700.00 from rental property and/or operation of a business.

Second, the Debtor has not provided the Trustee with a copy of his 2017 California income tax return. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the maximum fee that may be charged in a nonbusiness case is $4,000.00 pursuant to Local Bankr. R. 2016-1. Debtors' attorney's fees exceed this amount.

The plan filed January 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

7. 18-23408-B-13 SUSAN OLSEN MOTION TO INCUR DEBT
LBG-3 Lucas B. Garcia 2-12-19 [42]

Tentative Ruling

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase a 2017 Honda Civic, the total purchase price of which is $22,812.00 at a rate of 15.99%, with monthly payments of $497.99. The Debtor desires to complete this purchase as soon as possible because her current transportation has broken down, become unreliable, and repair is both costly and uncertain given the age and deterioration of the car.

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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING ITS MOTION WITHIN SEVEN (7) DAYS.

8. 14-24609-B-13 EDWIN VIRAY MOTION TO INCUR DEBT
BLG-1 Chad M. Johnson 2-4-19 [34]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Debtor seeks to refinance the existing loan on his home located at 2315 Fairview Place, Fairfield, California. The new loan is with Top Flite Financial, Inc. and the loan amount will be $468,050.00 at 4.625% for 30 years. Monthly payments will be $3,635.00 for years 1 through 11 and $3,331.00 for years 12 through 30.

The motion is supported by the Declaration of Edwin Viray. Although the Declaration affirms Debtors' desire to obtain the post-petition financing, the Debtor does not explain his ability to fund the new monthly payments, which is more than his current monthly contract installment with Citimortgage, Inc. listed in Class 4 at $3,016.76. Dkt. 13. In fact, the difference between the new loan amount and the current monthly contract installment appears to exceed Debtor's monthly disposable income. Dkt. 25.

The repayment of the new loan appears to unduly jeopardize the Debtors' performance of the plan dated May 8, 2014, and confirmed on June 30, 2014. The motion is denied without prejudice.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DENYING ITS MOTION WITHIN SEVEN (7) DAYS.

9. 18-23710-B-13 DAVID/EMILINDA VERA — CONTINUED MOTION TO CONFIRM PLAN
JJC-3 Julius J. Cherry — 12-17-18 [72]

Tentative Ruling

Introduction

The court has before it a motion a Motion to Confirm First Amended Plan filed by debtors David and Emilinda Vera ("Debtors"). Dkt. 72. The motion is opposed by the Chapter 13 Trustee ("Trustee"). Dkt. 83. The Debtors filed a reply to the Trustee's opposition. Dkt. 88. The Trustee filed a response to the Debtors' reply. Dkt. 92.

The court has reviewed the motion, opposition, reply, response, and all related declarations and exhibits. The court takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Partie' Positions

Debtors seek to confirm a first amended plan. The Trustee opposes the Debtors' motion to confirm a first amended plan on three grounds:

(1) The first amended plan does not comply with § 1325(b)(1)(B) because Debtors' disposable income is not being applied to make payments to unsecured creditors. Form 122C-2 filed September 14, 2018, shows that the Debtors' monthly disposable income is $406.42 and Debtors must pay no less than $24,385.20 to unsecured non-priority creditors. Debtors propose to pay a 0% dividend to the nonpriority unsecured claims. Based on the Notice of Filed Claims, Dkt. 81, filed January 17, 2019, the total amount of nonpriority unsecured claims is $45,119.50. Debtors' plan must pay at least 54% to nonpriority unsecured creditors.

(2) The plan payment in the amount of $2,125.00 and $3,245.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.2 of the mandatory form plan.

(3) Debtors' direct pay, or Class 4 treatment of Freedom Mortgage Corp., is improper since Debtors had prepetition arrearages with this creditor on the petition date.

Debtors' reply states that their first amended plan calls for the Trustee to pay the first mortgage arrears but that ongoing postpetition mortgage payments will be paid directly by the Debtors and therefore outside the plan. Debtors also request a detailed computation of how the Trustee reached an amount of at least 54% to be paid to nonpriority unsecured creditors. Lastly, Debtors argue that requiring postpetition mortgage payments to be paid through the Trustee will result in Debtors having to pay the Trustee's fee and less money will ultimately go to unsecured creditors.

The Trustee's response to the Debtors' reply asserts that it, *i.e.*, the Trustee, must pay ongoing postpetition mortgage payments and that the Debtors may not make this payment directly and outside the plan pursuant to the Local Rules and Mandatory Form Plan which states that if a debtor is in arrears on a mortgage claim when the case is filed (as there is no dispute the Debtors were), "the Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed." The Trustee argues that the Debtors have failed to provide a convincing reason as to why they should be allowed to make these payments directly. The Trustee also states that the Notice of Filed Claims which indicates direct payments by the Debtors is an informational document and does not have binding authority, so it should not be relied on as the ultimate treatment of claims under the plan. Finally, the Trustee does not explain its calculation of 54% but states that the Debtors' plan should not state 0% paid to nonpriority unsecured

creditors when the plan in fact pays more.

The Trustee's first and third objections are dispositive. Therefore, for the reasons explained below, those objections will be SUSTAINED and the Debtors' motion to confirm the first amended plan will be DENIED WITHOUT PREJUDICE.

Discussion

Debtors' payments directly to their mortgage lender rather than through the Trustee despite their prepetition default first. Debtors assert that such payments are authorized under *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40, 53 (9th Cir. BAP 2007), *adopted and affirmed*, 550 F.3d 1202 (9th Cir. 2008). They are; however, Debtors read *Lopez* much too broadly.

Although *Lopez* states that §§ 1326(c) and 1322 permit a debtor to make payments outside the plan - or directly to a creditor rather than through the trustee - it also states that allowing such debtor-direct payments is entirely within the discretion of the court. *Id.* at 46-47, 53. This was confirmed in *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 (9th Cir. BAP 2010), wherein the Ninth Circuit bankruptcy appellate panel stated: "In this appeal we are asked to determine whether [*Lopez*] allows a debtor the absolute right to pay an unimpaired claim directly to the creditor if the plan is otherwise confirmable. We find that a debtor has no absolute right to make such payments[.]" *See also Id.* at 690. In addition to ratifying the court's discretion in allowing debtor-direct payments, *Geisbrecht* also explains that the court may properly exercise its discretion through local rules or general orders. *Id.* at 690-91. Both exist here.

General Order 17-03 adopts a form Chapter 13 plan for use in this district, *i.e.*, EDC 3-080. The Local Rules make the use of the form plan adopted by the General Order mandatory in this district. *See* Local Bankr. R. 3015-1.

The mandatory form plan clearly defines the circumstances under which debtors in this district may make direct payments on a mortgage claim and that is only if there are no prepetition arrears and therefore no prepetition default when the petition is filed, *i.e.*, Class 4. Otherwise, if there are prepetition arrears, and therefore a prepetition default when the petition is filed, all postpetition mortgage payments must be made by the Trustee, *i.e.*, Class 1. Thus, in line with *Lopez* and *Geisbrecht*, this court has permissibly exercised its discretion through its Local Rules and a General Order and clearly defined the circumstances under which debtor-direct payments are permissible. And inasmuch as there is no dispute here as to the existence of prepetition arrears owing on the Debtors' mortgage when they filed, the Debtors do not meet the requirements this court has established in exercise of its discretion for allowing debtor-direct payments. The Trustee's Notice of Filed Claims does not change the equation. That notice does not - and cannot - supercede the authority of the court's discretion exercised through and stated in the Local Rules and General Order.

Even if the court were inclined to deviate from the Local Rules and the General Order - which it is not - Debtors offer nothing that warrants an exercise of discretion contrary to both in this case. The prepetition arrears on the Debtors' mortgage speaks for itself. Debtors were unable to make regular contractual payments before this case was filed and nothing suggests that the result would be any different going forward.

As to the disposable income issue, there is absolutely no reason for the first amended plan (or any other plan in any other case) to state that it will pay 0% to unsecured creditors when it actually will pay unsecured creditors a dividend, here apparentlyh 54% or more. The court has dealt with this issue previously and noted that such a practice is bad faith. Not only is it facially misleading and deceptive, but, it disincentives creditors from filing proofs of claim.

Conclusion

For all the foregoing reasons, the Trustee's first and third objections are sustained, the Debtors' motion to confirm their first amended plan is denied without prejudice,

and the Debtors' first amended plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER DENYING ITS MOTION WITHIN SEVEN (7) DAYS.

10. 17-25411-B-13 JPJ-1 **Thru #11**
JAMES/LILLIE JOHNSON
Mary Ellen Terranella
CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-29-18 [42]

No Ruling

11. 17-25411-B-13 MET-2
JAMES/LILLIE JOHNSON
Mary Ellen Terranella
CONTINUED MOTION TO MODIFY PLAN
9-25-18 [48]

No Ruling

12. 18-27211-B-13 APN-1
ROBERT/KELLY ROCHA
Lucas B. Garcia
MOTION FOR RELIEF FROM AUTOMATIC STAY
2-4-19 [21]

GLOBAL LENDING SERVICES, LLC
VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Global Lending Services, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Chrysler 200 (the "Vehicle"). The moving party has provided the Declaration of Shaquetta Rabb to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rabb Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of $1,140.90 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of $1,140.90.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $21,475.63 while the value of the Vehicle is determined to be $14,000.00 as stated in the Rabb Declaration.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING ITS MOTION WITHIN SEVEN (7) DAYS.

13. 18-27712-B-13 TOMMY/ALICE TAPLEY
CCR-1 Peter G. Macaluso
Thru #15

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FORTY-NINE LIMITED PARTNERSHIP, ELISABETH J. M. WEILAND, E PARTNERS, L.P., IRA SERVICES, KIMBERLY J. MAEDA, DAVID KERCHMAN, ET AL.
1-24-19 [17]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Forty-Nine Limited Partnership, Elisabeth J. M. Weiland, E Partners, L.P., IRA Services, Kimberly J. Maeda, David Kerchman, et al (collectively, "Creditor") holds a deed of trust secured by the Debtors' residence. Creditor has filed a timely proof of claim in which it asserts $226,959.38 in pre-petition arrearages. This amount represents the maturity of the Note on July 15, 2010. Debtors were notified by BayMark Financial, Inc. that the final balloon payment would become due on January 15, 2019. Debtors filed for bankruptcy on December 12, 2018.

While the plan does propose to cure these arrearages pursuant to 11 U.S.C. § 1325(a)(5)(B), Creditor asserts that the Debtors are unable to fund the payments since they were unable to make a lower interest only payment and property tax payment. Creditor also objects to the proposed 3% interest rate for payment on the claim and argues that it should be the contract rate of 9.5%.

Discussion

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., March 2, 2019, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.50%. Here, the plan proposes a 3.00% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, a debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

The court finds that the appropriate interest rate should be about 1.50% above the current prime rate given the nature of the security, the risk of default, and the lack

of evidence submitted by the Creditor that would warrant its entitlement to 9.50%. Accordingly, a rate of 7.0% suffices. The court sustains the objection as to increasing the interest rate but overrules the objection as to setting the interest rate at 9.50%.

The plan filed December 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and overruled in part, and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING IN PART AND DENYING IN PART ITS OBJECTION WITHIN SEVEN (7) DAYS.

14. 18-27712-B-13 JPJ-1 — TOMMY/ALICE TAPLEY, Peter G. Macaluso — CONTINUED OBJECTION CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-23-19 [14]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, feasibility depends on the granting of a motion to value collateral of Alliance Acceptance Corporation. That motion is denied without prejudice at Item #15.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since Debtors' projected disposable income is not being applied to make payments to unsecured creditors. When the correct amounts under Form 122C-2 at Lines 13b, 13e, and 17, the amount at Line 45 changes from ($93.78) to $2,917.76. This means Debtors must pay no less than $119,226.00 to unsecured, non-priority creditors. Section 3.14 of the plan shows that there is approximately $46,694.97 in unsecured, non-priority creditors. Based on this calculation, the Debtors must pay the unsecured, non-priority creditors in full.

Third, the objection raised by the Trustee that the Debtors must file an amended Schedule J and plan is partially resolved. Amended schedules were filed on February 6, 2019, but no amendments to the plan were filed.

The plan filed December 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

15. 18-27712-B-13 PGM-1 — TOMMY/ALICE TAPLEY, Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF ALLIANCE ACCEPTANCE CORPORATION 1-26-19 [22]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Debtors' motion to value the secured claim of Alliance Acceptance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2003 Mercedes Benz S430 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $2,800.00 as of the petition filing date. As the owner, 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).

However, the court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on Debtors' review of local newspapers, trade articles, and web sites such as Kelley Blue Book and NADA. Such references are third party industry sources and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803.

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).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

16. 18-21113-B-13 CAS-1 TIMOTHY/SHERRIE BENDER
Richard A. Hall
MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-19 [41]

CAPITAL ONE AUTO FINANCE VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Ford F150 SuperCrew Cab FX4 Pickup (the "Vehicle"). The moving party has provided the Declaration of LaTesha Lawson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lawson Declaration provides testimony that Debtor has not made 3.746 post-petition payments, with a total of $2,215.08 in post-petition payments past due. The Declaration also provides evidence that there are 1.518 pre-petition payments in default, with a pre-petition arrearage of $897.62.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $13,081.02 while the value of the Vehicle is determined to be $13,027.00 as stated in the Lawson Declaration.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING ITS MOTION WITHIN SEVEN (7) DAYS.

17. 19-20015-B-13 JPJ-1 **Thru #18**

LUIS/VANESSA GARCIA
Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [24]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Joint Debtor has not filed detailed statement showing gross receipts and ordinary and necessary expenses related to Joint Debtor's net income of $400.00 from rental property and/or operation of a business.

The plan filed January 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

18. 19-20015-B-13 MJ-1

LUIS/VANESSA GARCIA
Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY GUILD MORTGAGE COMPANY
2-12-19 [20]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Guild Mortgage Company holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $22,520.25 in pre-petition arrearages. The plan does not propose a reasonable schedule and time period for the payment of the arrearages owed to the creditor. 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 January 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

19. 18-26916-B-13 JERIMIAH CANNADAY
WSS-1 W. Steven Shumway
Thru #20

MOTION TO AVOID LIEN OF JEFF GARCIA AND/OR MOTION TO AVOID LIEN OF FIDELIS MARKETING, INC.
1-16-19 [34]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Jeff Garcia & Fidelis Marketing, Inc. ("Creditor") against the Debtor's property commonly known as 1141 Southbridge Circle, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $55,442.24. An abstract of judgment was recorded with Placer County on October 18, 2017, which encumbers the Property. All other liens recorded against the Property total $515,967.79.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $525,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of $14,749.00 on Schedule C.

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).

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING ITS MOTION WITHIN SEVEN (7) DAYS.

20. 18-26916-B-13 JERIMIAH CANNADAY
WSS-2 W. Steven Shumway

MOTION TO CONFIRM PLAN
1-16-19 [39]

No Ruling

21.	18-27816-B-13 JPJ-1	ANDREW/CATHIE DAVIS Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-5-19 [22]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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

Second, Joint Debtor failed to submit proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to February 28, 2019.

Third, there is a discrepancy as to how much Debtors' attorney was paid. The Disclosure of Compensation of Attorney for Debtors and the Rights and Responsibilities of Chapter 13 Debtors and Their Attorney both state that payment was $500.00 prior to the filing of the petition. The Statement of Financial Affairs states payment was $1,000.00.

The plan filed January 2, 2010, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

22.	18-27317-B-13 JPJ-1	CHRISTIE ZAKUTNEY Gabriel E. Liberman	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-9-19 [15]

No Ruling

23.	19-20118-B-13 RAS-1	ANDREW VOYEZ Gabriel E. Liberman	OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A. 2-14-19 [18]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor U.S. Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $12,222.11 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 January 9, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

24.	18-23319-B-13 MS-1	SANTIAGO YBARRA AND CRISTY MUNOZ Mark Shmorgon	MOTION TO MODIFY PLAN 1-31-19 [39]

Final Ruling

The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 33 days' notice was provided. The motion is dismissed without prejudiced and removed from the calendar.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

25. 15-26321-B-13 MARCELINO MANZANO — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 Dale A. Orthner — 1-25-19 [72]

CHAMPION MORTGAGE COMPANY
VS.

Tentative Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Champion Mortgage Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 7679 Millroy Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Donna Hamilton to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Hamilton Declaration states that the Debtor is delinquent for the forced placed insurance from June 18, 2018, through June 18, 2019, and that there is no equity present to justify the existence of an automatic stay against the Property.

Debtor opposes the motion and argues that he has a paid policy of insurance premiums as shown in Exhibit A, dkt. 84. Additionally, Debtor states that he has an equitable interest in the property and filed the current case to protect that interest, and that the property is necessary for an effective reorganization.

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 $238,511.30 as stated in the Hamilton Declaration. The value of the Property is determined to be $162,000.00 as stated in Schedules A and D filed by Debtor.

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 does not exist for terminating the automatic stay since the Debtor is current on insurance payments. 11 U.S.C. § 362(d)(1).

Additionally, Movant's contention that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Movant has not adequately plead or provided an evidentiary basis for granting relief for "cause."

For the reasons stated above, the motion is denied without prejudice.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

26.	15-24522-B-13 JPJ-3	ANTHONY/ANGELINA BOTELHO Candace Y. Brooks	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 1-30-19 [57]

No Ruling

27. 18-27622-B-13 JPJ-2 — JAMES NGUYEN, Gabriel E. Liberman — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS, 1-24-19 [24]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

First, the Debtor may not claim the specified assets as exempt under California Code of Civil Procedure § 704.070: JP Chase Bank checking account with a value of $329.64, JPMorgan Chase Bank personal savings account with a value of $2,443.85, and JPMorgan Chase Bank business checking account with a value of $1,647.61. This is because the Debtor is self-employed and the exemption does not apply to self-employed debtors.

Second, Debtor has improperly claimed his interest in a 2001 Dodge Ram 3500 Quad Cab as exempt under both California Code of Civil Procedure § 704.060 and California Code of Civil Procedure § 704.010. Pursuant to California Code of Civil Procedure § 704.060, a motor vehicle cannot be exempt under this section if there is a motor vehicle that is exempt under § 704.010 and that is reasonably adequate for the use in the trade, business, or profession for which the exemption is claimed.

Third, the Debtor may not claim two vehicles as exempt under California Code of Civil Procedure § 704.060(d)(2) since it expressly limits to one vehicle.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

28. 19-20022-B-13 AP-1 **Thru #29** | RAYMOND/CHRISTINE BELCHER
Peter G. Macaluso | OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
2-11-19 [27]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection.

Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtors' residence. Creditor asserts that the plan has not been proposed in good faith pursuant to § 1325(a)(3) because this is the Debtors' fifth bankruptcy and Creditor believes there is a clear pattern of the Debtors filing infeasible plans, allowing significant plan defaults to accumulate prior to dismissal, and merely refiling a short period after the dismissal of the prior case. Creditor also asserts that the plan is not feasible pursuant to § 1325(a)(6) because Debtors failed to provide a detailed statement of their business income and demonstrate an ability to maintain plan payments. The court agrees.

The Debtors are serial bankruptcy filers. This is the Debtors' fifth Chapter 13 case since 2011. The Debtors' four prior Chapter 13 cases were all non-productive.

All four (4) of the Debtors' prior Chapter 13 cases were dismissed for failure to make plan payments over a substantial period of time. All had substantial arrears owing when dismissed. And all were re-filed within a three-month window after dismissal of the prior case. More precisely:

(1) Case No. 11-29448 was filed on April 15, 2011, and dismissed on October 1, 2012, for failure to make plan payments. *Id.*, dkt. 44. A Notice of Default and Application to Dismiss filed in the case referenced $9,260.00 in delinquent plan payments. *Id.*, dkt. 41.

[three month break]

(2) Case No. 13-20501 was filed on January 15, 2013, and dismissed on December 2, 2015, for failure to make plan payments. At the time of dismissal, the Debtors were delinquent $18,645.00 in plan payments. *Id.*, dkt. 89. Notable here is that the court found that over $24,000.00 in funds the Debtors stated were available to fund the plan were unaccounted for. *Id.*

[three month break]

(3) Case No. 16-21203, was filed on February 29, 2016, and dismissed on March 8, 2017, for failure to make plan payments. *Id.*, dkt. 122. A Notice of Default and Application to Dismiss filed in the case referenced $21,222.00 in delinquent plan payments. *Id.*, dkt. 119.

[three month break]

(4) Case No. 17-24235, was filed on June 27, 2017, and dismissed on May 29, 2018, for failure to make plan payments. *Id.*, dkt. 70. A Notice of Default and Application to Dismiss filed in the case referenced $24,461.00 in delinquent plan payments. *Id.*, dkt. 47.

The basis for dismissal of the Debtors' four prior Chapter 13 cases, *i.e.*, large plan payment delinquencies, and the timing of the refiling of a subsequent Chapter 13 case, *i.e.*, within three months, present a clear and consistent pattern of abusive filings. That is bad faith. The pattern also reflects that the Debtors propose plans they know

are not feasible or with which they do not intend to comply. Both are also bad faith. Given these circumstances, the court is not persuaded that the Debtors have, in this case, proposed the present plan in good faith or that the Debtors have established that the current plan is feasible. Creditor's objections are therefore sustained.

The plan filed January 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed for reasons stated at Item #29.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

29. 19-20022-B-13 JPJ-1 — RAYMOND/CHRISTINE BELCHER — Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-13-19 [31]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a chapter 7 proceeding. According to Schedule A/B, the Debtor's opinion of the value of residential property located in Solano County is $525,000.00. The Trustee believes the property could be worth approximately $747,000.00. Additional evidence is needed from the Debtors regarding the value of the real property.

The plan filed January 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

30. 16-23723-B-13 MET-2 — LUCIAN/LISA FREIRE — Mary Ellen Terranella — MOTION TO MODIFY PLAN 1-19-19 [47]

No Ruling

31. 18-27923-B-13 **Thru #32**
ALVARO FIERRO AND ANEL LUNA
Thomas O. Gillis
OBJECTION TO CONFIRMATION OF PLAN BY TITLE HOLDING SERVICES CORPORATION
1-30-19 [20]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot in light of the ruling at Item #32.

Subsequent to the filing of the creditor's objection, the Debtors filed a response stating that they will file an amended plan. The plan filed December 21, 2018, is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

32. 18-27923-B-13 JPJ-1
ALVARO FIERRO AND ANEL LUNA
Thomas O. Gillis
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [24]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

The Debtors filed a response stating that they do not oppose the Chapter 13 Trustee's objection to confirmation. The earlier plan filed December 21, 2018, is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

33. 18-25728-B-13 JAMES RUELOS AND SUSAN SABADLAB
MB-2 Michael Benavides

MOTION TO CONFIRM PLAN
1-17-19 [35]

No Ruling

34.	15-28729-B-13 MET-1	CHARLES EVANS Mary Ellen Terranella	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JERLINE WALLACE-EVANS 2-5-19 [52]

No Ruling

35. 18-20631-B-13 SYREETA SHOALS MOTION TO MODIFY PLAN
MC-2 Muoi Chea 1-24-19 [45]

Final Ruling

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

36. 18-27831-B-13 VAL/CHANDRA COLA
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-6-19 [13]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors have not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs to reflect Debtor's wages in the 2017 calendar year. The Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

The plan filed December 18, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

37.	19-20131-B-13 JPJ-1	ROBIN BACON AND KAREN HARRELL Stephan M. Brown	OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON AND/OR MOTION TO DISMISS CASE 2-14-19 [15]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors have not filed an amendment indicating that the claim of Sierra Central Credit for a 2017 Jeep Wrangler should be classified as Class 4 due to the claim being current. The debtors have not complied with 11 U.S.C. § 1325(a)(1), (a)(3) and § 521(a)(3).

Second, the Debtors projected disposable income is not being applied to make payments to unsecured creditors. The Debtors have taken several impermissible deductions on Form 122C-2 at Lines 16, 25, and 41. Without these expenses, Debtors' monthly disposable income on Line 45 would be $330.20 and Debtors must pay no less than $19,812.00 to general unsecured creditors. The plan proposed pays $0.00 to general unsecured creditors.

The plan filed December 18, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

38.	17-24834-B-13 PGM-3	PATRICIA LEMKE Peter G. Macaluso	OBJECTION TO CLAIM OF DARLA O'DEA, CLAIM NUMBER 5 1-18-19 [73]

No Ruling

39. 18-27737-B-13 JPJ-1 **Thru #40**
APRIL/THOMAS AYATCH
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-23-19 [16]

No Ruling

40. 18-27737-B-13 PGM-1
APRIL/THOMAS AYATCH
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
1-26-19 [19]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Debtors' motion to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2014 Dodge Journey ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $4,850.00 as of the petition filing date. As the owner, 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).

However, the court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on Debtors' review of local newspapers, trade articles, and web sites such as Kelley Blue Book and NADA. Such references are third party industry sources and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803.

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).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

41. 18-26238-B-13 KATE KERNER MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 1-26-19 [33]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

42.	17-23439-B-13 MET-1	WENDY ROBINETTE Mary Ellen Terranella	MOTION TO MODIFY PLAN 1-20-19 [32]

No Ruling

43. 19-20643-B-13 NED/EDNA SMITH MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 2-8-19 [8]

Thru #44

Tentative Ruling

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on January 13, 2019, due to delinquency in plan payments (case no. 15-22296, dkt. 66). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

Discussion

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 Debtors state that the previous and present cases were filed in order to prevent foreclosure on their family home. The Debtors were nearing the fourth year of the plan in the previous bankruptcy and had fallen behind on plan payments due to unanticipated medical expenses. The delinquent payments could not be caught up in the last year of the plan without increasing the payment to an amount that the Debtors could not reasonably afford. The Debtors do have stable and steady Social Security and retirement income, and have budgeted for ongoing property taxes.

The Debtors have 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

44. 19-20643-B-13 NED/EDNA SMITH
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF PERITUS PORTFOLIO SERVICES
2-15-19 [15]

Tentative Ruling

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

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

Debtors' motion to value the secured claim of Peritus Portfolio Services ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2005 Lexus ES300 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,929.00 as of the petition filing date. As the owner, 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).

However, the court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on valuation guides, sales sites such as CarMax, and newspaper ads for used vehicles. Such references are third party industry sources and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803.

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).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

45.	15-21845-B-13 JPJ-5	JOSEPH BARNES Scott D. Shumaker	MOTION TO RECONVERT CASE TO CHAPTER 7 1-29-19 [225]

No Ruling

46. 19-20845-B-13 RAYMOND CORREA MOTION TO EXTEND AUTOMATIC STAY
TBK-1 Tara Kurta 2-18-19 [9]

Tentative Ruling

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 January 13, 2019, due to delinquency in plan payments (case no. 17-25366, dkt. 71). 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.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 does not explain why the previous and present cases were filed. A review of the Debtor's schedules shows that he has no interest in real property and that his only assets are a vehicle, household goods, and a 2018 income tax refund of $500.00. A review of Debtor's schedules and plan shows that the only secured creditor is Santander Consumer USA whose security interest is in the Debtor's vehicle. The Debtor's prior chapter 13 case was dismissed due to delinquency in plan payments and the Debtor has not explained how his circumstances have changed to ensure success in the present chapter 13 case. In fact, it is questionable to the court whether chapter 13 is the best avenue of bankruptcy relief for this Debtor.

The Debtor has not 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 denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

47. 15-22149-B-13 MATTHEW MCKEE
APN-1 Peter G. Macaluso
Thru #48
WELLS FARGO BANK, N. A. VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-18 [58]

Final Ruling

THE MATTER IS CONTINUED 45 DAYS TO 4/23/19 AT 1:00 P.M. TO ALLOW BOTH DEBTOR AND WELLS FARGO BANK, N.A. ADDITIONAL TIME TO OBTAIN A FORMAL APPRAISAL OF THE REAL PROPERTY AT ISSUE.

THE COURT WILL ENTER A MINUTE ORDER.

48. 15-22149-B-13 MATTHEW MCKEE
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
2-5-19 [70]

Final Ruling

THE MATTER IS CONTINUED 45 DAYS TO 4/23/19 AT 1:00 P.M. TO ALLOW BOTH DEBTOR AND WELLS FARGO BANK, N.A. ADDITIONAL TIME TO OBTAIN A FORMAL APPRAISAL OF THE REAL PROPERTY AT ISSUE.

THE COURT WILL ENTER A MINUTE ORDER.

49. 19-20049-B-13 RICHARD MENA
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [18]

DEBTOR DISMISSED: 02/16/19

Final Ruling

The case having been dismissed on February 16, 2019, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

50.	19-20050-B-13 JPJ-1	RONALD BROWN Julius J. Cherry	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-13-19 [14]

Final Ruling

CONTINUED TO 3/12/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

THE COURT WILL ENTER A MINUTE ORDER.

51.	17-26052-B-13	TANISHA MAVY Pro Se	CONTINUED NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 12-28-18 [111]

No Ruling

52. 18-26352-B-13 TIMOTHY CLARK
AP-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-19 [36]

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

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3900 Y Street, Sacramento, California (the "Property"). Movant has provided the Declaration of Gloria Rocha to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Rocha Declaration states that there are 3 post-petition defaults, with a total of $7,288.86 in post-petition payments past due. Additionally, there are 21 pre-petition payments in default, with a total of $40,152.19 in pre-petition payments past due.

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 $531,956.85 (including $342,712.94 secured by Movant's first deed of trust) as stated in the Rocha Declaration. The value of the Property is determined to be $425,000.00 as stated in Schedules A and D filed by Debtor.

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. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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 Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees 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.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

53. 18-24853-B-13 ESP-1
RAFAEL/MARSHA ESPINOSA
Yasha Rahimzadeh
MOTION TO CONFIRM PLAN
1-7-19 [57]
Thru #54

No Ruling

54. 18-24853-B-13 JPJ-2
RAFAEL/MARSHA ESPINOSA
Yasha Rahimzadeh
CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
12-7-18 [49]

No Ruling

55.	17-23854-B-13 PGM-2	TIAJUANNA TOLES Peter G. Macaluso	MOTION TO MODIFY PLAN 1-25-19 [55]

No Ruling

56. 18-26354-B-13 APN-1 — TIMOTHY/NICOLE ARSENAULT — Bruce Charles Dwiggins — MOTION FOR RELIEF FROM AUTOMATIC STAY — 1-25-19 [31]

TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Camry (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration provides that the lease agreement between Movant and Debtors reached maturity on December 7, 2018, and that Debtors surrendered the Vehicle to Movant.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And the Vehicle having been surrendered, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING ITS MOTION WITHIN SEVEN (7) DAYS.

57. 18-27654-B-13 JASON/MOLLY ZYSMAN — MOTION TO CONFIRM PLAN
DEF-3 David Foyil — 1-9-19 [22]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

58.	15-22255-B-13 PGM-7	MANPREET/GURPREET LAKHAT Peter G. Macaluso	MOTION TO MODIFY PLAN 1-26-19 [120]

No Ruling

59.	18-26355-B-13 CRG-1	MATTHEW/KRISTEN KIRKPATRICK Carl R. Gustafson	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 7 1-8-19 [19]

Final Ruling

The objection 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. 7-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Matthew and Kristen Kirkpatrick, the Debtors (collectively "Objector"), request that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 7-1. The claim is asserted to be in the amount of $1,592.62. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

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 Objector's exhibits, the last payment was received on or about January 12, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 8, 2018, 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).

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

60. 18-27555-B-13 JPJ-2 | MATTHEW SLAGLE
Mikalah R. Liviakis | OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-24-19 [30]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection.

The Debtor may not claim the specified assets as exempt under California Code of Civil Procedure § 704.070: cash in the amount of $1,500.00, a Golden 1 Credit Union checking and savings account in the amount of $3,000.00, and three 529 college savings accounts in the amounts of $5,400.00, $5,100.00, and $345.00. This is because the Debtor is self-employed and the exemption does not apply to self-employed debtors. Additionally, the earnings of Debtor's non-filing spouse are not an earnings withholding order or an earnings assignment. Based on the definition under California Code of Civil Procedure § 704.070, the Debtor is only entitled to claim $3,462.00 as exempt and is not entitled to claim any amounts from the 529 college savings accounts.

The Trustee's objection is sustained and the Debtor is only entitled to claim $3,462.00 as exempt and is not entitled to claim any amounts from the 529 college savings accounts.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

61.	18-20356-B-13 JPJ-3	FILIBERTO GUIZAR AND ARACELI MENDOZA Thomas O. Gillis	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 2-1-19 [37]

Final Ruling

The case was dismissed on February 21, 2019. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

62. 18-22156-B-13 ROBERT/DEANNA HAMMAN — MOTION TO MODIFY PLAN
HLG-5 Kristy A. Hernandez — 1-28-19 [81]

No Ruling

63. 18-21957-B-13 WILLIAM AMARAL
PGM-9 Peter G. Macaluso

OBJECTION TO CLAIM OF KRONICK MOSKOVITZ TIEDMANN & GIRARD, CLAIM NUMBER 3
1-11-19 [176]

Final Ruling

The objection 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. 3-1 of Kronick Moskovitz Tiedmann & Girard and the claim is disallowed in its entirety.

William Amaral, the Debtor ("Objector"), requests that the court disallow the claim of Kronick Moskovitz Tiedmann & Girard ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $27,803.49. Objector asserts that the claim should be disallowed because there is no contract showing personal liability of the Objector who is not a party to the contract, the claim fails to provide any accounting, and there is no language showing evidence of any personal guarantee by the Objector.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim is not presumptively valid. No attachments are provided showing an accounting or Objector's personal liability on the claim. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

64. 18-24457-B-13 TONYA MILLER
TLA-1 Thomas L. Amberg

MOTION TO MODIFY PLAN
1-29-19 [28]

Final Ruling

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

65. 19-20559-B-13 KARRI WIECK
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF CHASE BANK USA, N.A.
2-6-19 [10]

Tentative Ruling

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

The court's decision is to value the secured claim of Chase Bank USA, NA at $14,000.00.

Debtor's motion to value the secured claim of Chase Bank USA, NA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Sentra ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $14,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,762.00. 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 $14,000.00. *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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

66. 18-26061-B-13 AUREA/CARLOS GOMEZ MOTION TO CONFIRM PLAN
RLG-4 Robert L. Goldstein 1-18-19 [50]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

67.	18-27962-B-13 JPJ-1	GUILLERMO MIRALRIO W. Steven Shumway	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-13-19 [23]

Final Ruling

CONTINUED TO 3/26/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 3/21/19.

THE COURT WILL PREPARE A MINUTE ORDER.

68. 19-20362-B-13 DONNA JOHNSON
MEV-1 Marc Voisenat

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
1-28-19 [11]

Tentative Ruling

This matter was continued from February 12, 2019, to allow the Debtor to file supplemental evidence by February 19, 2019. Debtor filed a declaration on February 18, 2019. This motion was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion as to all parties in interest except as to the Internal Revenue Service, and to conditionally grant the motion to extend automatic stay as to the Internal Revenue Service.

Debtor Donna Johnson ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 29, 2018, due to Debtor's failure to timely confirm a Chapter 13 plan (case no. 18-23674, dkt. 49). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 filed the past and present bankruptcy cases in an effort to save her home. According to the Declaration of Donna Johnson, Debtor's circumstances have changed because she is now managing her depression with medication and therapy, she is more focused, and her concentration has increased, all which collectively help her make better financial and other decisions. Debtor continues to make a steady income consisting of social security and operating a janitorial service.

The motion is granted and the automatic stay is extended for all purposes and as to all parties and interest, except as to the Internal Revenue Service. As to the Internal Revenue Service, the automatic stay is further extended to March 26, 2019. This motion is continued to March 26, 2019, at 1:00 p.m. and, provided that the Debtor serves the Internal Revenue Service at all addresses required by Local Bankr. R. 2002-1(c), the court also intends to grant Debtor's motion as to the Internal Revenue Service. 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; **however, the IRS must receive proper notice.**

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER CONDITIONALLY GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

69. 18-25264-B-13 JAMES/LORI PERRY — MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 1-24-19 [38]
Thru #70

No Ruling

70. 18-25264-B-13 JAMES/LORI PERRY — MOTION FOR OMNIBUS RELIEF UPON INCAPACITATION OF DEBTOR AND/OR MOTION TO WAIVE THE 11 U.S.C. 1328 AND FINANCIAL MANAGEMENT REQUIREMENTS FOR DEBTOR, JAMES L. PERRY
PGM-3 Peter G. Macaluso — 2-1-19 [45]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to substitute Joint Debtor Lori Perry to continue administration of the case, and waive Debtor James Perry's certification otherwise required for entry of a discharge.

Joint Debtor Lori Perry gives notice of the incompetency of her husband Debtor James Perry and requests the court to substitute Lori Perry in place of James Perry for all purposes within this Chapter 13 proceeding. Debtor was hospitalized in November 2018 for heart related issues, which have seriously diminished his health and rendered him unable to sign bankruptcy forms or effectively participate in the case.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the incompetent debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Lorri Perry for James Perry as successor-in-interest and to waive the § 1328 and financial management requirements for James Perry. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

71. 18-27365-B-13 JPJ-2 **Thru #74**
YVONNE JOHNSON
Stacie L. Power
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-4-19 [21]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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 wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

72. 18-27966-B-13 AP-1
YVONNE RICHARDS
Stacie L. Power
OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
2-14-19 [32]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

The Debtor filed a response stating that she will provide for the full amount of the pre-petition mortgage arrears in an amended plan. The plan filed January 9, 2019, is

not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

73. 18-27966-B-13 JHW-1 — YVONNE RICHARDS, Stacie L. Power — OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC 1-31-19 [24]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

The Debtor filed a response stating that she will provide for the full amount of the pre-petition mortgage arrears in an amended plan. The plan filed January 9, 2019, is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

74. 18-27966-B-13 JPJ-1 — YVONNE RICHARDS, Stacie L. Power — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-13-19 [29]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

75.	19-20068-B-13 JPJ-1	MELANIE PAULY MONTERROSA Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-13-19 [20]

Final Ruling

CONTINUED TO 3/26/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 3/21/19.

THE COURT WILL ENTER A MINUTE ORDER.

76.	18-24869-B-13 MRL-5	SARAH COUFOS Mikalah R. Liviakis	MOTION FOR COMPENSATION FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS ATTORNEY(S) 1-21-19 [36]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Mikalah Liviakis ("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. 27. Applicant now seeks additional compensation in the amount of $1,462.50 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 39.

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 it was unanticipated that the Debtor would require substantial post-confirmation services related to the release of funds from the sale of Debtor's real property. Applicant states that he spent approximately 162 minutes toward this service. Applicant's hourly fee at the time of the service was $375.00 per hour. 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.

That said, the court notes that 162 minutes equals 2.7 hours. At $375.00 per hour, 2.7 hours equals $1,012.50. Therefore, the court allows counsel additional compensation of $1,012.50 and not the $1,462.50 requested.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

77. 18-27776-B-13 KAREN HALL
JPJ-1 Jeanne Serrano

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-5-19 [26]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

An order granting confirmation of the plan filed December 28, 2018, was entered on February 16, 2019. Dkt. 34.

THE COURT WILL ENTER A MINUTE ORDER.

78. 19-20476-B-13 JEFFERY/ANNA SISK — MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
DAO-1 Dale A. Orthner — 2-4-19 [16]
Thru #80

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Golden 1 Credit Union at $0.00.

Debtors' motion to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 6068 Southerness Drive, El Dorado Hills, California ("Property"). Debtors seek to value the Property at a fair market value of $649,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that 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 $668,000.00.

Creditor's second deed of trust secures a claim with a balance of approximately $136,591.93. 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

79.	19-20476-B-13 DAO-2	JEFFERY/ANNA SISK Dale A. Orthner	MOTION TO VALUE COLLATERAL OF SERRANO EL DORADO OWNERS ASSOCIATION 2-4-19 [20]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Serrano El Dorado Owners Association at $0.00.

Debtors' motion to value the secured claim of Serrano El Dorado Owners Association ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 6068 Southerness Drive, El Dorado Hills, California ("Property"). Debtors seek to value the Property at a fair market value of $649,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that 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. 6-1 filed by Serrano El Dorado Owners Association 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 $668,000.00. The second deed of trust secures a claim with a balance of approximately $136,591.93. Creditor's third deed of trust secures a claim with a balance of approximately $6,000.00. 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

80.	19-20476-B-13 DAO-3	JEFFERY/ANNA SISK Dale A. Orthner	MOTION TO VALUE COLLATERAL OF BH FINANCIAL SERVICES, LLC 2-4-19 [24]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of BH Financial Services, LLC at $0.00.

Debtors' motion to value the secured claim of BH Financial Services, LLC ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 6068 Southerness Drive, El Dorado Hills, California ("Property"). Debtors seek to value the Property at a fair market value of $649,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some

evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that 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. 3-1 filed by BH Financial Services, LLC 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 $668,000.00. The second deed of trust secures a claim with a balance of approximately $136,591.93. The third deed of trust secures a claim with a balance of approximately $6,000.00. Creditor's fourth deed of trust secures a claim with a balance of approximately $22,162.86. 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

81. 19-20077-B-13 JOHN JAMES
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-13-19 [16]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor failed to submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed January 8, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

82. 19-20977-B-13 LISA BRAXTON
MS-1 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC.
2-19-19 [9]

Tentative Ruling

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

The court's decision is to value the secured claim of Real Time Resolutions, Inc. at $0.00.

Debtor's motion to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5250 Nugget Road, Fair Oaks, California ("Property"). Debtor seeks to value the Property at a fair market value of $325,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that 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 $335,903.29. Creditor's second deed of trust secures a claim with a balance of approximately $73,358.48. 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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

83.	18-27779-B-13 JPJ-1	MARCUS WOODFORK AND SHERI TOMKINS Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-1-19 [17]

No Ruling

84. 18-25780-B-13 TIFFANY MILLER
PPR-2 Mohammad M. Mokarram

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-25-19 [51]

J.P. MORGAN MORTGAGE ACQUISITION CORP. VS.

Final Ruling

The case was dismissed on February 23, 2019. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

85. 18-27780-B-7 JPJ-1 **Thru 86**

CHRISTINA GROTT
Mikalah R. Liviakis
2-1-19 [23]

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR

CONVERTED TO CH 7
02/01/2018

Final Ruling

The case was converted to a chapter 7 bankruptcy on February 1, 2018. The objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

86. 18-27780-B-7 VC-1

CHRISTINA GROTT
Mikalah R. Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
2-1-19 [17]

ALLIANT CREDIT UNION VS.
CONVERTED TO CH 7
02/01/2018

Final Ruling

The case was converted to a chapter 7 bankruptcy on February 1, 2018. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

87. 19-20680-B-13 JESSICA KELLER
LBG-1 Lucas B. Garcia

MOTION TO EXTEND AUTOMATIC STAY
2-19-19 [10]

Tentative Ruling

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 January 16, 2019, due to delinquency in plan payments (case no. 18-24211, dkt. 74). 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.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 does not explain why the previous and present cases were filed, but the court infers from the schedules and plan that they were done to save Debtor's home from foreclosure. Debtor states that her circumstances have changed from the previous case because she now has a roommate and gained government assistance that will add to her monthly income. However, no declaration has been provided by the roommate stating a contribution toward Debtor's monthly income. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

The Debtor has not 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 denied without prejudice.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.

88.	18-27781-B-13 JPJ-1	ROGER/RACHEL KRIER Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-1-19 [14]

No Ruling

89. 16-28384-B-13 TOG-3 — JORGE MONDRAGON AND MARIA CAUDILLO — Thomas O. Gillis — MOTION TO MODIFY PLAN 1-24-19 [21]

Final Ruling

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

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

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

90. 18-26684-B-13 PEARLIE ABELEDA
Thru #91 Ryan Keenan

MOTION TO AVOID LIEN OF EDD EMPLOYMENT DEVELOPMENT DEPT.
1-18-19 [36]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

This is a request for an order avoiding the judicial lien of EDD Employment Development Dept. ("Creditor") against the Debtor's personal property consisting of a 2017 Ford Fiesta, 2007 Ford Focus, 2009 Honda Civic, household goods, furniture, electronics, clothing, and deposit accounts with Chase Bank, Wells Fargo Bank, and Bank of America (collectively "Personal Property").

Although the Debtor asserts that judgment was entered against it in favor of Creditor in the amount of $9.882.95 and recorded with the Sacramento County Recorder on July 2, 2014, based the Summary Itemization of Proof of Claim filed as an exhibit, no abstract of judgment was filed as an exhibit. The Summary Itemization of Proof of Claim is not authenticated which means, at best, it is inadmissible hearsay.

The court cannot determine whether the fixing of this judicial lien impairs the Debtor's exemption of the Personal Property or whether its fixing is avoided pursuant to 11 U.S.C. § 522(f)(2)(A). Without an abstract of judgment to support its assertion, the Debtor has failed to meet the burden of establishing all elements of § 522(f). *See In re Armenakis*, 406 B.R. 589, 604 (Bankr. S.D.N.Y. 2009). And even in the absence of an objection by a judicial lien creditor, the court cannot grant affirmative relief unless the Debtor has established a prima facie basis for relief under § 522(f). *In re Schneider*, 2013 WL 5979756 at *3 (Bankr. E.D.N.Y. 2013). The Debtor has not met that burden. Therefore, the Debtor's motion is denied without prejudice.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DENYING ITS MOTION WITHIN SEVEN (7) DAYS.

91. 18-26684-B-13 PEARLIE ABELEDA
RPK-1 Ryan Keenan

MOTION TO CONFIRM PLAN
1-28-19 [49]

No Ruling

92. 17-23385-B-13 MUSTAPHA FATINE
EMM-1 Mikalah R. Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-29-19 [27]

FREEDOM MORTGAGE CORPORATION
VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 9792 Woodhollow Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Barbra Cooper to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Cooper Declaration states that there are 3 post-petition defaults, with a total of $4,139.88 in post-petition payments past due.

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 $172,436.79 as stated in the Cooper Declaration. The value of the Property is determined to be $297,750.00 as stated in the Cooper Declaration.

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. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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

No other or additional relief is granted by the court.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS

93. 18-26787-B-13 HUMBERTO VIEYRA
TOG-1 Thomas O. Gillis

MOTION TO CONFIRM PLAN
1-29-19 [21]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

94.	18-25088-B-13 PLC-1	DANIEL MASSEY Peter L. Cianchetta	MOTION TO CONFIRM PLAN 1-29-19 [43]

No Ruling

95.	18-25589-B-13 NSV-3	ROCHELLE WARD Nima S. Vokshori	MOTION TO CONFIRM PLAN 1-16-19 [45]

No Ruling

96. 18-27989-B-13 JESSE NIESEN
JPJ-1 Mark Shmorgon
Thru #98

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-14-19 [52]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on February 5, 2019. The confirmation hearing for the amended plan is scheduled for April 16, 2019. The earlier plan filed January 10, 2019, is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

97. 18-27989-B-13 JESSE NIESEN
KSR-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY BAYWEST FINANCIAL PROFIT SHARING PLAN
1-21-19 [17]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Bay West Financial Profit Sharing Plan's objection, the Debtor filed an amended plan on February 5, 2019. The confirmation hearing for the amended plan is scheduled for April 16, 2019. The earlier plan filed January 10, 2019, is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING ITS OBJECTION WITHIN SEVEN (7) DAYS.

98. 18-27989-B-13 JESSE NIESEN
KSR-2 Mark Shmorgon

MOTION TO DISMISS CASE
1-21-19 [22]

Final Ruling

The document filed at dkt. 22 which purports to be a motion is not a motion and therefore is ORDERED STRICKEN. *See* Local Bankr. R. 9014-1. Docket 22 is in the nature of a notice of hearing. The documents at Dockets 23, 24, 25, and 26 are therefore, respectively, exhibits, a declaration, a memorandum of points and authorities, and a certificate of service unsupported by any motion and therefore are also ORDERED STRICKEN.

THE COURT WILL PREPARE A MINUTE ORDER.

99. 18-26995-B-13 URBAN/WENDY KIRK MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 2-5-19 [28]

Final Ruling

The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 28 days' notice was provided. The motion is dismissed without prejudiced and removed from the calendar.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER DENYING THE MOTION WITHIN SEVEN (7) DAYS.