UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 6, 2018 at 1:00 p.m.

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1. 17-27902-B-13 MJ-1 — ROSEMARY SIMMONS, Richard L. Jare — MOTION FOR RELIEF FROM AUTOMATIC STAY, 1-23-18 [51]

M & T BANK VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay and Annulment of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant in part and deny in part the motion.

M&T Bank as Attorney In Fact for Lakeview Loan Servicing, LLC ("Creditor") seeks relief from the automatic stay with respect to real property commonly known as 9560 Moss Hill Way, Sacramento, California (the "Property") pursuant to 11 U.S.C. § 362(d)(1) and (2). Creditor also seeks relief pursuant to 11 U.S.C. § 362(d)(4) on grounds that Debtor's filing was part of a scheme to delay, hinder, and defraud creditors. Creditor further contends that the case was not filed in good faith since more than 1 previous case was pending within the preceding 1-year period. 11 U.S.C. § 363(c)(3)(C)(i). Lastly, Creditor seeks to annul the automatic stay and retroactively validate the foreclosure sale.

Creditor has provided the Declaration of Melissa Riley to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Riley Declaration shows that there is 1 post-petition default, with a total of $1,808.84 in post-petition payment past due. Additionally, there are 42 pre-petition payments in default, with a total of $82,279.42 in pre-petition payments past due.

Responses

Responses have been filed by the Chapter 13 Trustee and Debtor. The Trustee has filed a non-opposition to the motion for relief from stay while Debtor has filed an opposition.

Debtor opposes the motion and concedes that there was no § 362(a) automatic stay in effect under 11 U.S.C. § 362(c)(4)(A) since there were 2 cases pending within the previous year that were dismissed. Instead, Debtor asserts that there was a codebtor stay in place pursuant to 11 U.S.C. § 1301 because Debtor had transferred a 1% interest in the Property to her son on the evening of December 3, 2017, which was the day before a foreclosure sale of the Property and the day the Chapter 13 petition that commenced this case was filed, both occurring on December 4, 2017.

Debtor contends that Creditor makes no request to vacate or annul the § 1301 codebtor stay and that any determination by the court as to whether the § 1301 codebtor stay went into effect upon the filing of this bankruptcy case should be determined through an adversary proceeding. The court disagrees and explains below. Finally, Debtor argues that Creditor's accounting of the balance due should be approximately

$246,425.85 and not $333,425.85, and that there is equity cushion in the property.

Discussion

The court agrees with Debtor that no automatic stay was in effect pursuant to 11 U.S.C. § 362(c)(4)(A). Section 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The Debtor's first bankruptcy case pending within the previous year was dismissed on April 3, 2017, after Debtor failed to appear at the meeting of creditors and failed to make plan payments (case no. 16-28056, dkts. 32, 35). The Debtor's second bankruptcy case pending within the previous year was dismissed on October 25, 2017, after Debtor failed to timely file documents (case no. 17-26016, dkt. 41).

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases.

Accordingly, the automatic stay did not go into effect upon the filing of the instant case on December 4, 2017. *See* 11 U.S.C. § 362(c)(4)(A)(ii) & (j). And since no automatic stay went into effect when the petition was filed, the court denies Creditor's request to annul the stay and retroactively validate the foreclosure sale of the Property that occurred on the same day the petition that commenced this Chapter 13 case was filed (i.e., December 4, 2017). Absent the automatic stay, the foreclosure sale did not occur in violation of the automatic stay.

The Debtor's arguments that a § 1301 codebtor stay arose when the petition that commenced this Chapter 13 case was filed and was in place at the time of the foreclosure sale on December 4, 2017, and that such a determination should be made in an adversary proceeding, are without merit. They also border on the frivolous.

The court determined on January 9, 2018, that the Debtor failed to prove her unauthorized quitclaim of a 1% interest in the Property to her son on December 3, 2017, made the Debtor's son a § 1301 codebtor when the petition was filed on December 4, 2017. Dkt. 49. Re-litigation of that issue is now barred under the doctrine of issue preclusion which also eliminates any need for Creditor to request relief under § 1301.

Issue preclusion, or collateral estoppel, "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (internal quotation marks omitted). To determine if the issue preclusion doctrine applies, the Ninth Circuit applies a three-prong test, asking if "(1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be re-litigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom [issue preclusion] is asserted was a party or in privity with a party at the first proceeding." *Paulo v. Holder*, 669 F.3d 911, 917 (9th Cir. 2011) (internal quotation marks omitted, alteration in original). All three elements are satisfied here.

The Debtor filed a motion to impose the automatic stay on December 26, 2017, and an amended motion to impose the automatic stay on January 6, 2018. Dkts. 24, 46. The Debtor asserted in both the motion and the amended motion that the unauthorized prepetition conveyance of a 1% interest in the Property to her son on December 3, 2017, made her son a § 1301 codebtor when the Chapter 13 petition was filed the following day. *Id.* at ¶¶ 4,5. Investment Buyers Balihar Gill, Amna Limited Liability Company, LLC, and Amandip Singh ("Investment Buyers") opposed the Debtor's motion and in their opposition vigorously disputed that the Debtor's son was a § 1301 codebtor. Dkt. 36 at ¶¶ 16-32. The court addressed that issue and in its civil minutes, agreed with Investment Buyers, and ultimately concluded that the Debtor failed to establish that

her son was a § 1301 codebtor. *See* Dkt. 49. In other words, the court determined that the Debtor failed to meet her burden of proving the existence of a § 1301 codebtor. *See In re Xenon Anesthesia of Texas, PLLC*, 510 B.R. 106, 111 (Bankr. S.D. Tex. 2014) (burden of proving stay applicable to non-debtor is on party invoking it). That's the first prong.

The second prong is also satisfied. The conclusion that the Debtor failed to carry her burden of establishing that her son is a § 1301 codebtor was made in the context of orders that were entered on January 12, 2018 and January 26, 2018, respectively, which denied relief that Debtor had requested with prejudice. Dkts. 50, 60.[1] Except in circumstances not applicable here, a denial with prejudice operates as a final adjudication on the merits. *Marin v. HEW, Health Care Financing Agency*, 769 F.2d 590, 594 (9th Cir. 1985), *cert. denied*, 474 U.S. 1061 (1986); *see also* 9 Wright & Miller § 2373, at 396, n. 4 ("[W]ith prejudice is an acceptable form of shorthand for an adjudication upon the merits") (internal quotations omitted). And because the Debtor did not appeal either order, both orders and their supporting findings and conclusions are now final. The determination that the Debtor failed to prove the existence of a § 1301 was therefore made in the context of a final determination on the merits.

The third prong likewise is satisfied. The Debtor moved to impose the automatic stay against Balihar Gill, Amandip Singh, and Anna LLC, successors in interest to pre-petition creditor M&T Bank. That motion was denied with prejudice. Dkt. 60. The Debtor now opposes M&T Bank's motion.

So in sum, the automatic stay of § 362(a) did not go into effect when the Debtor filed the petition that commenced this third bankruptcy case. *See* 11 U.S.C. § 362(j). Therefore, retroactive relief from the automatic stay, *i.e.*, an annulment, is not appropriate and will be denied as moot. In the context of a final adjudication on the merits, the Debtor has also failed to establish that her son is a § 1301 codebtor and re-litigation of that issue is barred under by the issue preclusion doctrine. And, accordingly, in the absence of a § 1301 codebtor there is no § 1301 codebtor stay.

Alternatively, if ever the Debtor could establish that her son is a codebtor and thence there is a § 1301 codebtor stay, the court grants Creditor relief from that codebtor stay. Relief from the § 1301 codebtor stay may be granted if a "creditor's interest would be irreparably harmed by continuation of such stay." 11 U.S.C. § 1301(c)(3). The court reads Creditor's motion and memorandum of points and authorities to assert that without the ability to exercise its rights and remedies under applicable nonbankruptcy law, *i.e.*, the continuation of a codebtor stay, the Debtor's bad faith conduct consisting of multiple bankruptcy filings affecting the Property and an unauthorized transfer of a fractional interest in the Property as part of scheme to hinder, delay, and defraud Creditor, have prevented (and will continue to prevent) Creditor from exercising its rights and remedies under applicable nonbankruptcy law, *i.e.*, resulted (and will continue to result) in irreparable harm. Therefore, the court alternatively reads Creditor's motion as a request for relief under § 1301(c)(3). *See U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) ("The moving party's label for its motion is not controlling. Rather, the court will construe it, however styled, to be the type proper for relief requested."); *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015) (stating that "the court must construe motions so as to provide just, speedy, and inexpensive determination of every case and proceeding" and may re-designate as necessary).

The Debtor does not dispute her multiple bankruptcy filings, each of which invoked the stay as to Creditor. The court has also determined (in the same final adjudication on

[1]The order entered January 12, 2016, at dkt. 50, states that denial of relief requested is without prejudice. That appears to be a typographical error inasmuch as the civil minutes at dkt. 49 reflect that the court's intent was to deny relief with prejudice. Dkt. 50 was subsequently amended at Dkt. 61. And in any case, the order on the amended motion entered on January 26, 2018, at dkt. 60, which is the superceding order on the amended motion, states that denial of the requested relief is with prejudice.

the merits discussed above) that the Debtor engaged in bad faith conduct and that she also filed this (her third in a year) Chapter 13 case in bad faith by implementing a scheme seeking to manufacture a codebtor stay and by transferring a fractional interest in the Property to her son hours before a foreclosure sale and shortly before the petition that commenced this Chapter 13 case was filed. Dkt. 49. The Debtor's bad faith conduct described herein and in dkt. 49 are cause for termination of the § 1301 codebtor stay. *See In Re Amey*, 314 B.R. 864, 867 (Bankr. N.D. Ga. 2004) ("[T]he Court concludes that Movant has shown cause for the lifting of the automatic and codebtor stays, and the Court will, therefore, terminate them pursuant to 11 U.S.C. § 362(d) and § 1301(c)."); *In re Cupolo*, 2013 WL 211536, *3 (Bankr. E.D. Ky. 2013) ("Accordingly, cause exists to modify the stay and co-debtor stay[.]"). Moreover, the court agrees with Creditor that the Debtor's bad faith conduct as described herein and in dkt. 49 has caused (and will continue to cause) Creditor irreparable harm in that the Debtor is using the bankruptcy process as part of a scheme to hinder, delay, and defraud Creditor by preventing Creditor from exercising its legitimate and lawful rights and remedies under applicable nonbankruptcy law. So for those reasons, construed alternatively as a request for relief from the codebtor stay, Creditor's motion will be granted.

Additionally, any applicable § 1301 codebtor stay, if there is one, is terminated retroactive to the petition date, *i.e.*, annulled. Annulment is particularly appropriate in this case given the number of bankruptcy filings by the Debtor in an extremely short period of time and as part of a scheme to prevent Creditor from foreclosing, the Debtor's bad faith conduct, Creditor's lack of knowledge of the bankruptcy filing, and the prejudice to Creditor that would result inasmuch as the foreclosed Property was purchased by the third-party Investment Buyers at foreclosure.[2] *See Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment); *In re Morris*, 385 B.R. 823, 829 (Bankr. E.D. Va. 2008 (noting that courts have generally allowed relief from the codebtor stay on the same basis as that under § 362(d) and citing cases); *In re Allen*, 300 B.R. 105, 122 (Bankr. D. Dist. Col. 2003) (noting that relief available under § 362(d) also available under § 1301 and holding that annulling codebtor stay was warranted where creditor was unaware that the bankruptcy petition had been filed, and the Debtor had abused the bankruptcy system by conveying real property to himself and his mother and filing a Chapter 13 on his mother's behalf in an attempt to stop the foreclosure sale). Therefore, although there was none but if there was or if it is ever determined that there was a § 1301 codebtor stay in effect on December 4, 2017, it is annulled retroactive to the filing of the petition that commenced this Chapter 13 case.

Finally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property*

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[2] Although the Debtor claims she sent faxes to the foreclosure trustee before the foreclosure sale, there is no evidence those faxes were received and reviewed before the sale occurred. Creditor states that it was unaware and the court finds that Creditor is more credible than the Debtor and her attorney. In fact, the Debtor and her attorney are not credible because, despite the apparent transfer of the fractional interest in the Property to her son, Debtor's Statement of Financial Affairs filed January 2, 2018, signed under penalty of perjury and filed by her attorney, states that the Debtor did not give any gifts valued at more than $600.00 to any person in the prior two years and did not sell, trade, or otherwise transfer any property in the prior two years. *See* Dkt. 30.

without the consent of the secured creditor or court approval; or

"*(B) multiple bankruptcy filings affecting such real property.*"

The Debtor has filed bankruptcy a total of three times within the past year in an effort to thwart Creditor from foreclosing on the Property. In each of the two prior bankruptcies, Debtor's case was dismissed. The day before the scheduled foreclosure sale, Debtor transferred a 1% interest in the Property to her son, and the morning of the foreclosure sale, Debtor filed this bankruptcy case. The court finds that the Debtor's multiple bankruptcy filings and unauthorized transfer were part of a scheme to delay, hinder, or defraud Creditor from exercising its rights against the Property.

Attorneys' Fees Requested

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

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

2. 18-20006-B-13 DAVID ALONSO
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-8-18 [21]

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

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

First, the Debtor has not 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).

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

Third, the plan filed on does not contain either the Debtor's original wet signature or electronic signature. It also does not contain either the Debtor's attorney's original wet signature or electronic signature. The plan does not comply with Local Bankr. R. 9004-1(c)(1)(A) and Fed. R. Bankr. P. 9011(a).

The plan filed January 2, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

3. 18-20012-B-13 JPJ-1 **Thru #5**
FLORA NANCA
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-8-18 [35]

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

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

First, the Debtor did not appear at the meeting of creditors set for February 1, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's income from rental property and/or operation of business as listed on Schedule I. Feasibility of the plan cannot be fully assessed.

Third, feasibility depends on the granting of motions to value collateral for Deutsche Bank and PNC Bank. Those motions to value are granted at Item #4 and #5.

Fourth, the Debtor has not provided the Trustee with a copy of the Home Owner's Insurance Policy in connection with her business South Sacramento Facility. Because of this, it cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed January 2, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

4. 18-20012-B-13 PGM-2
FLORA NANCA
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST COMPANY/CIT BANK, N.A.
1-31-18 [22]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Value Collateral of Deutsche Bank National Trust Company/CIT Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed

material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Deutsche Bank National Trust Company/CIT Bank, N.A. at $0.00.

Debtor's motion to value the secured claim of Deutsche Bank National Trust Company/CIT Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5235 Ehrhardt Avenue, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $212,415.00[3] 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.

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 $325,648.72. Creditor's second deed of trust secures a claim with a balance of approximately $41,160.08. 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*

[3] The Debtor is inconsistent in both its motion and declaration stating that the Property is valued at both $211,734.00 and $212,415.00. The court concludes that the Property's value is $212,415.00. This is supported by Schedule A/B. Dkt. 1. The valuation of $211,734.00 actually pertains to property located at 1 Veloz Court, Sacramento, California. *See* dkt. 1. *See also* Debtor's Motion to Value Collateral of PNC Bank, N.A., dkt. 29.

re Zimmer), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

5.	18-20012-B-13 PGM-3	FLORA NANCA Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF PNC BANK, N.A. 1-31-18 [29]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Value Collateral of PNC Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor's motion to value the secured claim of PNC Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1 Veloz Court, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $211,734.00 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 $255,306.20. Creditor's second deed of trust secures a claim with a balance of approximately $106,807.09. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

6. 17-27013-B-13 MICHAEL HALLETT MOTION TO CONFIRM PLAN
SDH-1 Scott D. Hughes 1-22-18 [31]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,570.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $,570.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a cure of the post-petition arrearage, including a specific post-petition arrearage amount, interest rate, and monthly dividend, owed to both Seterus Inc. and Bank of America, N.A. in Class 1. The Trustee is unable to comply with § 2.08(b) of the plan.

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

The court will enter an appropriate minute order.

7. 17-28213-B-13 PAVEL LISETSKY
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-8-18 [19]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on February 21, 2018. However, it does not appear that the amended plan was served or set for hearing. Nonetheless, the earlier plan filed December 27, 2017, is not confirmed.

The court will enter an appropriate minute order.

8. 17-26618-B-13 NANETTE CUSTADO MOTION TO CONFIRM PLAN
JMC-2 Joseph M. Canning 1-22-18 [44]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 26, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

9. 15-29325-B-13 MENEN/MARIA ZARATE — MOTION TO MODIFY PLAN
MRL-1 Mikalah R. Liviakis — 1-8-18 [28]

Tentative Ruling: The Motion to Confirm Debtor's Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan filed on January 8, 2018, does not contain either the Debtors' attorney's original wet signature or electronic signature. The plan does not comply with Local Bankr. R. 9004-1(c)(1)(A) and Fed. R. Bankr. P. 9011(a).

Second, the plan payment in the amount of $210.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $460.58. The plan does not comply with Section 5.2 of the mandatory form plan.

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

The court will enter an appropriate minute order.

10.	17-27127-B-13 PGM-2	SHERWIN BRAMLETT Peter G. Macaluso	OBJECTION TO CLAIM OF PALISADES ACQUISITION XVII, CLAIM NUMBER 3 1-19-18 [66]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

Debtor's Objection to claim #3-1, Filed by Palisades Acquisition XVII on December 19, 2017, and Attorney Fees in Defense Thereof has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to overrule the objection to Claim No. 3-1 of Palisades Acquisition XVII.

Debtor Sherwin Bramlett ("Objector") requests that the court disallow the claim of Palisades Acquisition XVII ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $1,255.81. Objector asserts that the claim should be disallowed because there is no evidence that the last transaction date on the account was made within four years prior to the filing of this case. Because of this, it is Debtor's position that the last transaction on the account was made more than four years prior to the filing of this case and that the State of Limitations for this claim has run. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337.

Discussion

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 Objector has not presented substantial and factual basis to overcome the prima facie validity of the proof of claim. The Debtor merely asserts that the Statute of Limitations has run because the Creditor's proof of claim provides no date of the last transaction on the account. The Debtor provides no evidence in the form of a declaration or exhibits showing that the last transaction occurred more than four years prior to the filing of this case. This is insufficient to overcome the presumptive validity of the claim. Local Bankr. R. 3007-1(a) ("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."). The Debtor has also failed to demonstrate how the use of a summary attached to the proof of claim defeats the claim's prima facie validity. *See Heath v American Express Travel Related Svc. Co., (In re Heath)*, 313 B.R. 424, 432-433 (9th Cir. BAP 2005).

Attorneys' Fees Requested

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

Based on the evidence before the court, the Creditor's claim is not disallowed. The

objection to the proof of claim is overruled without prejudice.

The court will enter an appropriate minute order.

11. 17-28332-B-13 ROBERT TERRY
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-8-18 [13]

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

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

First, the Debtor did not appear at the meeting of creditors set for February 1, 2018, as required pursuant to 11 U.S.C. § 343.

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

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

Fourth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,412.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,412.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed December 26, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

12. 17-25734-B-13 REX MORRISON MOTION TO CONFIRM PLAN
YG-1 Yelena Gurevich 1-10-18 [43]

Tentative Ruling: The Motion to Confirm Debtor's 2nd Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor did not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard for Chapter 13 plan effective December 1, 2017.

Second, while the motion states that the Debtor seeks to confirm the plan dated October 31, 2017, it appears that the Debtor actually seeks to confirm the plan dated January 10, 2018.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $816.81, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $816.81 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and other administrative expenses through the lan with a monthly payment specified at $0.00.

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

The court will enter an appropriate minute order.

13. 17-23739-B-13 JUAN CALZADA
RLC-1 Stephen M. Reynolds

MOTION TO APPROVE LOAN MODIFICATION
2-2-18 [36]

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

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

Debtor seeks court approval to incur post-petition credit. Seterus Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,391.54 a month to $1,729.66 a month including escrow amounts. The modification will have an interest rate of 2.875% and the new payment will become first due on February 1, 2018. A copy of the loan modification agreement is filed as Exhibit 1, docket 40.

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

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

The court will enter an appropriate minute order.

14. 11-33547-B-13 MICHAEL/LOLITA CHANEY — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
PGM-3 Peter G. Macaluso — 2-12-18 [88]

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

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

This is a request for an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against the Debtors' property commonly known as 8859 Heathermist Way, Elk Grove, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $7,659.92. An abstract of judgment was recorded with Sacramento County on February 3, 2011, which encumbers the Property. All other liens recorded against the Property total $328,375.84.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $172,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

15. 17-22648-B-13 DONALD TRECO
RAH-8 Richard A. Hall
Thru #16

AMENDED MOTION TO VALUE COLLATERAL OF THUNDER ROAD FINANCIAL
2-16-18 [117]

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

The court's decision is to value the secured claim of Thunder Road Financial at $9,608.06.

Debtor's motion to value the secured claim of Thunder Road Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Indian Scout Motorcycle ("Motorcycle"). The Debtor seeks to value the Motorcycle at a replacement value of $9,010.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by ThunderRoad Financial, LLC is the claim which may be the subject of the present motion. The amount claimed is stated to be $9,608.06.

Discussion

The lien on the Motorcycle's title secures a purchase-money loan incurred on June 10, 2016, which is less than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,608.06. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is granted and the value of Creditor's secured claim is $9,608.06.

The court will enter an appropriate minute order.

16. 17-22648-B-13 DONALD TRECO
RAH-9 Richard A. Hall

MOTION TO VALUE COLLATERAL OF ALASKA USA FEDERAL CREDIT UNION
1-27-18 [104]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Value Secured Portion of Claim of Alaska USA Federal Credit Union has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Alaska USA Federal Credit Union at $23,832.14.

Debtor's' motion to value the secured claim of Alaska USA Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Chevrolet Tahoe ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $23,832.14 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4 filed by Alaska USA Federal Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on October 27, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $27,316.89. 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 $23,832.14. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

17. 17-21449-B-13 JOHN KRAINTZ AND LESLIE WENTLING KRAINTZ
Muoi Chea
MOTION TO MODIFY PLAN
1-17-18 [42]
MC-1

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 filed on January 17, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18. 16-22950-B-13 JOYCELYN/FRANCISCUS VAN HOOF
PGM-3 Peter G. Macaluso

MOTION TO MODIFY PLAN
1-26-18 [63]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Flied on January 26, 2018, 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 filed on January 26, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

19.	18-20051-B-13 JPJ-1	RORY MCNEIL Mark W. Briden	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-13-18 [19]

CONTINUED TO 4/17/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS ON 4/12/18 AT WHICH TIME THE DEBTOR MUST HAVE FILED HER 2015 AND 2016 TAX RETURNS AND PROVIDED THE TRUSTEE WITH COPIES.

Final Ruling: No appearance at the March 6, 2018, hearing is required. The court will enter an appropriate minute order.

20. 18-20052-B-13 JPJ-1 **Thru #21**
WANDA MOORE
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-8-18 [27]

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

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

First, feasibility depends on the granting of a motion to value collateral for Americredit Financial Services, Inc. That motion to value is denied without prejudice at Item #21.

Second, the Debtor has not provided the Trustee with an appraisal or BPO to support her valuation of real property located at 8053 Dorian Way, Fair Oaks, California. The Trustee believes based on its initial investigation that the property could be worth as much as $387,000.00. Debtor values this property at $180,000.00. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the plan may not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors might receive a higher distribution in a Chapter 7 proceeding. The Debtor claimed a portion of a Whole Life Insurance Policy with State Farm as exempt in the amount of $9,561.76 using California Code of Civil Procedure § 703.140(b)(11)(C). However, this exemption is for payments received for a matured life insurance policy. The plan currently pays $0.00 to general unsecured creditors.

The plan filed January 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

21. 18-20052-B-13 PGM-2
WANDA MOORE
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
1-31-18 [21]

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

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

Debtor's motion to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford Mustang ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $4,000.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Americredit Financial Services is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting a replacement value of $5,925.00 based upon NADA Used Car Guide. Creditor acknowledges the list of repair work asserted by the Debtor but contends that the Debtor fails to provide evidence, such as repair estimates, to support her stance that the repair costs are approximately $1,925.00. Creditor requests that the Debtor provide additional evidence to support her opinion of valuation and make the Vehicle available for the Creditor's inspection.

Discussion

The value offered by the Creditor, $5,925.00, is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.nadaguides.com.

The clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This may not be the case. Second, 11 U.S.C. § 506(a)(2) asks for "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." What must be determined, therefore, is what a retailer would charge for this particular Vehicle as it is.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. There is no evidence from the Debtor on this point.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

It is further ordered that the Debtor shall make the Vehicle available for Creditor to inspect.

The court will enter an appropriate minute order.

22. 12-24553-B-13 ARCHALENE MARTIN
PGM-2 Peter G. Macaluso

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
2-9-18 [60]

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

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

This is a request for an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 7015 Rivercove Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,464.02. An abstract of judgment was recorded with Sacramento County on July 14, 2011, which encumbers the Property. All other liens recorded against the Property total $447,886.18.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $300,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 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).

The court will enter an appropriate minute order.

23. 17-28053-B-13 CHARLIE BALANGUE MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 1-10-18 [24]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Confirm Debtor's Chapter 13 Plan Filed on January 9, 2018, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 plan.

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 plan filed on January 9, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

24. 14-28959-B-13 KAY MILLER — MOTION TO MODIFY PLAN
SDB-4 W. Scott de Bie — 1-18-18 [78]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The plan cannot be effectively administered because the modified plan filed January 18, 2018, does not specify the post-petition arrearage amount and interest rate owed to Ocwen Loan Servicing, LLC in Class 1. Due to the failure of the Debtor to make plan payments timely under the terms of the previously confirmed plan, the Trustee had lacked funds to pay the post-petition contract installments for the months of December 2014, January 2015, May 2017, August 2017, December 2017, and January 2018. The Trustee is unable to fully comply with § 2.08(b) of the plan.

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

The court will enter an appropriate minute order.

25. 17-27762-B-13 JPJ-1 **Thru #26**

RICHARD MYHRE
Pro Se

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
1-8-18 [22]

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

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

First, feasibility depends on the granting of the motion to value collateral for JPMogran Chase Bank, N.A. That motion is denied without prejudice at Item #26.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Based on the listed exemptions in Schedule C and Debtor's 1/3 interest in real property that is not the primary residence, the total amount of non-exempt property in the estate is $160,254.01. After deducting Chapter 7 fees, the total amount that would be paid to unsecured creditors in a Chapter 7 proceeding is $148,991.31. The total amount that will be paid to unsecured creditors in the Chapter 13 proceeding is only $37,194.44.

The plan filed November 28, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

26. 17-27762-B-13 PGM-1

RICHARD MYHRE
Pro Se

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
1-5-18 [17]

Tentative Ruling: The Motion to Value Collateral of JPMorgan Chase Bank, N.A. 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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtor's motion to value the secured claim of JPMorgan Chase Bank, National Association ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4201 Wise Road, California ("Property"). Debtor seeks to value the Property at a fair market value of $350,000.00 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.

Opposition

Creditor has filed an opposition disputing the fair market value. The Declaration of Gail Brown states that the Property has a fair market value of $587,000.00 as of January 22, 2018. Debtor has included a Residential Broker Price Opinion (BPO) as Exhibit 5, dkt. 46. The BPO states that the valuation is an exterior appraisal. Creditor requests that the motion be denied or continued to allow the Creditor time to obtain a verified interior appraisal of the Property.

Discussion

The Creditor has produced a BPO indicating that the value of the Property, based on its exterior condition, is $587,000.00. Although the BPO is based on comparable sales, it does not take into account any needed repairs or even the interior condition of the home. Creditor even admits that an interior inspection of the Property is required in order to obtain a verified appraisal of the Property. Thus, the court is not convinced that the Property has a value of $587,000.00.

On the other hand, Debtor has attempted to justify the $350,000.00 value by pointing zillow.com[1], local comparable sales of homes in the neighborhood, and consulting with a realtor and/or broker. Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies

[1] Zillow.com is inherently unreliable. *In re Darosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010); *see also DeBilio v. Golden (In re DeBilio)*, 2014 WL 4476585, *7 (9th Cir. BAP 2014) (citation omitted); *In re Cocreham*, 2013 WL 4510694, *3 (Bankr. E.D. Cal. 2013) (citations omitted).

as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

While neither parties have persuaded the court regarding their position of the value the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

27. 17-23765-B-13 STEVEN ADAMS MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 1-23-18 [67]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Fled on January 23, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the last payment posted to the Debtor's case was on August 28, 2017. The next payment is due on February 25, 2018. The final day to object to Debtor's motion to modify is February 20, 2018. The plan will not be confirmed if the Debtor fails to make the February 25, 2018, payment. The Debtor must carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $3,300.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $3,977.46. The plan does not comply with Section 5.2 of the mandatory form plan.

Third, the modified plan filed January 23, 2018, includes "Nonstandard Provisions for Section 2.01" that describes the treatment of the Class 1 Arrearage Dividend to Roundpoint: "Class 1 claim for arrears shall be resolved in Sacramento Superior Court Case #34-2017-00218389, upon which the chapter 13 plan shall be modified within 45 days of completion, if necessary to cure any remaining arrears." Problematic is that this language alters the standard language of the plan under Section 3.07(a) by not proposing equal monthly installments to Roundpoint for the arrearage dividend. Also any pre-petition arrears paid directly through the state court action is contrary to Section 3.07 of the standard plan. Lastly, it would be an undue burden on the Trustee to have to monitor the state court action on a monthly basis to ensure the plan is being modified within 45 days of completion of the superior court case. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor lists 5 post-petition payments owed to Roundpoint under Class 1 of the plan in the amount of $13,857.54. Since the petition was filed, the Trustee has disbursed two payments to Roundpoint Mortgage Services Corporation. The Trustee calculates the post-petition delinquency to be $13,335.84. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

28. 15-29773-B-13 PGM-8 — CHARLES HUGHES AND VIRA EISON; Peter G. Macaluso — MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY; 1-25-18 [115]

JOINT DEBTOR DISMISSED: 10/04/2017

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Application for Additional Attorney Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation]. Dkt. 54. Applicant now seeks additional compensation in the amount of $1,110.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 115.

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

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor's circumstances would change due to divorce and Debtor would require modification of the plan and dismissal for his estranged spouse. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$1,110.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

29. 15-29573-B-13 SAUNDRA BATTAGLIA
17-2091 BMV-4
BATTAGLIA V. THE BANK OF NEW YORK MELLON ET AL

MOTION FOR STAY PENDING APPEAL
2-6-18 [96]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion to Stay Action Pending Appeal 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). 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). 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 suspend all further action in this adversary proceeding and defer a decision on defendant's motion for stay pending appeal in the manner set forth below.

In an order filed on December 21, 2017, the court denied in part and granted in part a motion to dismiss this adversary proceeding filed by defendant Bank of New York Melon. Dkt. 75. On January 4, 2018, defendant filed a motion for leave to appeal that interlocutory order solely as it pertains to two causes of action alleged under 11 U.S.C. § 362(a) together with a corresponding notice of appeal in the United States Bankruptcy Appellate Panel for the Ninth Circuit. Dkts. 81, 83. Defendant's motion for leave to appeal remains pending before the BAP. *See* BAP No. EC-18-1009, Dkt. 7. Thereafter, on February 6, 2018, defendant filed a motion for stay pending its interlocutory appeal. Dkt. 96. Plaintiff Saundra Battaglia filed a non-opposition on February 20, 2018. Dkt. 102.

Inasmuch as the BAP has not granted defendant leave to proceed with its interlocutory appeal of the order granting in part and denying in part defendant's motion to dismiss, there presently is no appeal pending that warrants a stay. Nevertheless, the court will suspend all further action in this adversary proceeding, including its decision on defendant's motion for a stay, pursuant to 11 U.S.C. § 305(a) pending the BAP's decision on the defendant's motion for leave to proceed with its interlocutory appeal. *See In re Lebbos*, 2007 WL 1521476, *1 (Bankr. E.D. Cal. 2007) (observing that request to stay adversary proceeding as a whole pending an appeal within purview of § 305(a)). The court suspends further action in this adversary proceeding in the interests of judicial economy and so as to not unduly infringe on or interfere with the BAP's jurisdiction by conducting proceedings that may exceed its own jurisdiction while BAP decides whether it will grant defendant leave to proceed with its interlocutory appeal. *See generally Ruby v. Sec'y of the U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966), *cert. denied*, 386 U.S. 1011 (1967).

This order of suspension shall terminate upon the BAP's entry of an order disposing of the defendant's pending motion for leave to appeal.

If the BAP grants defendant's motion for leave to appeal and permits defendant to proceed with an interlocutory appeal, defendant may re-set and re-notice a hearing on its motion for a stay pending that appeal. Defendant need not re-file the motion (or any of its supporting documents) but the motion (and its supporting documents) shall be re-served on plaintiff together with an amended notice of hearing. Defendant shall use the same docket control number as the motion, Dkt. 96, for the amended notice of hearing. A hearing on defendant's motion shall be set in accordance with Local Bankr. R. 9014-1(f)(1) with plaintiff's opposition, if any, and defendant's reply, if any, due as provided in that local rule.

If the BAP denies defendant's motion for leave to appeal and does not permit defendant to proceed with its interlocutory appeal, all proceedings in this adversary shall

thereupon resume and defendant's motion for stay pending appeal will be denied as moot. The court will enter an appropriate minute order.

30. 17-28179-B-13 PRISCILLA MCMANUS
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-8-18 [19]

DEBTOR DISMISSED: 03/01/2018

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The case having been dismissed on March 1, 2018, the objection is dismissed as moot.

The court will enter an appropriate minute order.

31. 17-24480-B-13 **Thru #34**
RENEE MARTIN
Albert L. Boasberg
OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 1
1-22-18 [89]

DEBTOR DISMISSED: 02/08/2018

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The case having been dismissed on February 8, 2018, the objection is dismissed as moot.

The court will enter an appropriate minute order.

32. 17-24480-B-13
RENEE MARTIN
Albert L. Boasberg
OBJECTION TO CLAIM OF REAL TIME RESOLUTIONS, INC., CLAIM NUMBER 2
1-22-18 [91]

DEBTOR DISMISSED: 02/08/2018

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The case having been dismissed on February 8, 2018, the objection is dismissed as moot.

The court will enter an appropriate minute order.

33. 17-24480-B-13
RENEE MARTIN
Albert L. Boasberg
OBJECTION TO CLAIM OF CALVALRY SPV I, LLC, CLAIM NUMBER 3
1-22-18 [93]

DEBTOR DISMISSED: 02/08/2018

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The case having been dismissed on February 8, 2018, the objection is dismissed as moot.

The court will enter an appropriate minute order.

34. 17-24480-B-13
RENEE MARTIN
Albert L. Boasberg
OBJECTION TO CLAIM OF DEUTSCHE BANK NATIONAL TRUST COMPANY (OCWEN LOAN SERVICING), CLAIM NUMBER 4
1-22-18 [95]

DEBTOR DISMISSED: 02/08/2018

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The case having been dismissed on February 8, 2018, the objection is dismissed as moot.

The court will enter an appropriate minute order.

35. 17-26480-B-13 TORREAN TYUS MOTION TO VACATE
PGM-2 Peter G. Macaluso 2-9-18 [71]

DEBTOR DISMISSED: 02/02/2018

Tentative Ruling: The Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justifies the court vacating the order dismissing the case. The Declaration of Torrean L. Tyus states that Debtor had surgery to his neck on January 25, 2018, and that because of this he forgot about the final installment fee due January 29, 2018. Debtor also admits that his attorney's office contacted him on January 25, 2018, regarding the installment fee but that he doesn't remember talking with the office due to still being affected by anesthesia. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

Discussion

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtor forgot to make the last installment due January 29, 2018, due to his neck surgery four days before. Debtor has provided his attorney with a money order for the final fee installment. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect because Debtor forgot about the final installment fee due to the neck surgery and was affected by anaesthesia to remember to pay the fee despite his attorney's office calling him. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court will enter an appropriate minute order.

36. 18-20180-B-13 JOHN GARBE
VVF-1 Mikalah R. Liviakis
Thru #37
AMERICAN HONDA FINANCE
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-18 [17]

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

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

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Honda CBR 500, VIN ending in 00073 (the "Motorcycle"). The moving party has provided the Declaration of Whitney Rae to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rae Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $146.61 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of $146.61.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $6,280.73, as stated in the Rae Declaration, while the value of the Motorcycle is determined to be $5,900.00, as stated in Schedules A/B and D filed by Debtor.

Debtor has already surrendered the Motorcycle on January 27, 2018.

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 Debtor 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 Motorcycle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Motorcycle 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 American Honda Finance Corporation, its agents, representatives and successors, and all other creditors having lien rights against the Motorcycle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

37. 18-20180-B-13 JOHN GARBE — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-2 Mikalah R. Liviakis — 2-13-18 [23]

AMERICAN HONDA FINANCE CORPORATION VS.

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

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

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Accord, VIN ending in 30700 (the "Vehicle"). The moving party has provided the Declaration of Whitney Rae to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rae Declaration provides testimony that Debtor has not made 1.2 post-petition payments, with a total of $852.50 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $31,659.52, as stated in the Rae Declaration, while the value of the Vehicle is determined to be $25,500.00, as stated in Schedules A/B and D filed by Debtor.

Debtor has already surrendered the Vehicle on January 27, 2018.

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 Debtor 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor 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 American Honda Finance Corporation, 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.

The court will enter an appropriate minute order.

38. 15-24484-B-13 JESSICA THOENE MOTION TO SELL
RWF-1 Robert W. Fong 1-29-18 [53]

Tentative Ruling: The Motion to Sell Real Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 8317 Lewis Avenue, Antelope, California ("Property").

Proposed purchaser Yevgeniy Paramonov has agreed to purchase the Property for $372,000.00. All liens secured by the Property shall be paid in full in a manner consistent with the confirmed Chapter 13 plan, escrow shall not close without all liens and encumbrances being paid in accordance to the terms of the short sale agreement, and Debtor shall send a final escrow closing statement to the Trustee after close of escrow. The plan will not be paid off by the sale of this Property but the current estimated general unsecured claims totaling over $17,000.00 will be paid in full. Debtor intends to file a modified plan since the obligation on the Property will no longer need to be provided for in the plan.

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

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

The court will enter an appropriate minute order.

39. 13-34188-B-13 HENRY/HAZEL CASTILLO MOTION TO MODIFY PLAN
MJD-1 Matthew J. DeCaminada 1-30-18 [68]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 filed on January 30, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

40. 17-25488-B-13 RUDY NELSON DELA VEGA — MOTION TO CONFIRM PLAN
CYB-1 Candace Y. Brooks — 1-19-18 [28]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Motion for Confirmation of Debtors' First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 19, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

41.	17-26191-B-13 MJD-1	CATHERINE VAIL Matthew J. DeCaminada	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 3-1 1-9-18 [16]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

Debtor's Objection to Allowance of Claim 3-1 of LVNV Funding, LLC 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 LVNV Funding, LLC and the claim is disallowed in its entirety.

Debtor Catherine Vail ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $780.25. 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 July 17, 2000, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 18, 2017, 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.

The court will enter an appropriate minute order.

42. 16-20564-B-13 KATRINA NOPEL ORDER TO SHOW CAUSE
2-22-18 [95]

Final Ruling: No appearance at the March 6, 2018, hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor and Chapter 13 Trustee as stated on the Certificate of Service on February 24, 2018.

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to make any plan payments under the terms of the plan confirmed September 29, 2017, and failure to make two plan payments under the terms of the modified plan filed January 9, 2018. Debtor was delinquent in the amount of $7,812.33 and has not made any payments for at least the past nine months. Debtor was ordered to show cause, in writing filed by February 27, 2018, why this case should not be dismissed. The Trustee was ordered to file a response, if any, by February 27, 2018. Dkts. 94, 95.

No response was filed by February 27, 2018. The Order to Show Cause is therefore sustained and the case is ordered dismissed.

The court will enter an appropriate minute order.