UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 13, 2018 at 1:00 p.m.

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1. 17-28002-B-11 ERLINDA GIL — MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE
AF-5 Arasto Farsad — 1-29-18 [55]

CONVERTED: 02/07/18

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The case having been converted to a Chapter 11 on February 7, 2018, the motion is denied as moot.

The court will enter an appropriate minute order.

2. 13-20603-B-13 TERESA FAVA MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 2-5-18 [30]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Motion to Modify 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 Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 5, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

3. 18-20103-B-13 JPJ-1 — ULYSSES ANDRY, Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-21-18 [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.

The plan does not comply with 11 U.S.C. § 1322(b)(2) because it proposes an impermissible modification of the secured claim of Mr. Cooper, the holder of the first deed of trust on the Debtor's principal residence. No evidence has been presented at that the lender has consented to or is considering a loan modification. The court does not approve the terms proposed in the additional provisions. In this court's view, the additional provisions are an impermissible modification of the deed of trust under § 1322(b)(2).

The plan filed January 22, 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.	18-20011-B-13 JPJ-1	JASON/TIFFANIE RUPCHOCK Michael Benavides	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-21-18 [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 Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors' plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because it does not provide that all of the Debtors' projected disposable income is being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B).

Second, the Debtor has not amended Schedule I to remove the deduction for domestic support obligation listed under line no. 5f. The Debtors testified at the first meeting of creditors that this payroll deduction does not exist and was listed in error.

The plan filed January 11, 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.

5.	17-28213-B-13 JPJ-2	PAVEL LISETSKY Pro Se	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 2-13-18 [22]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The Trustee objects to the Debtor's use of both §704 with the subsections applicable for §703 to exempt his interest in real and personal property. Additionally, the Debtor has claimed his interest in real property located at 4443 Bogart Way with a value of $328,000.00 as exempt under California Code of Civil Procedure §704.7140(b)(5) in the full amount of $328,000.00. This is not a valid exemption and the exemption does not exist in either the §704 or §703 code sections.

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

The court will enter an appropriate minute order.

6. 13-20816-B-13 MARTIN WEBER
17-2054 DSB-2
WEBER V. DEUTSCHE BANK NATIONAL TRUST COMPANY ET AL

MOTION FOR SANCTIONS AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING
2-22-18 [40]

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

The court's decision is to grant the motion for terminating sanctions, deny the motion for issue and evidentiary sanctions, and grant the motion for attorney's fees.

Deutsche Bank National Trust Company, as Trustee for the Certificate holders of Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-MLNI and Nationstar Mortgage LLC ("Defendants") move for terminating sanctions pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v) on grounds that Martin Weber ("Plaintiff") failed to obey the court's order entered January 31, 2018, requiring him to respond to written discovery, produce documents, appear for deposition, and pay monetary sanctions. Additionally, Defendants seek monetary sanctions for filing this motion in the amount of $1,875.00. In the alternative, Defendants request an order for issue and evidence preclusion sanctions pursuant to Fed. R. Civ. P. 37(b)(2)(A)(i)-(ii).

No response was filed by the Debtor.

Discussion

The Ninth Circuit has a five-part test, with three subparts to the fifth part, to determine whether a case-dispositive sanction under Fed. R. Civ. P. 37(b)(2)(A)(v) is just:

"(1) [T]he public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Connecticut General Life Insurance Company v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). The subparts of the fifth factor are: whether the court has considered lesser sanctions, whether it tried the lesser sanctions, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions. *Conn. Gen. Life Ins. Co.*, 482 F.2d at 1096, citing *Jorgensen v. Cassiday*, 320 F.3d 906, 912 (9th Cir. 2003); quoting *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

Both of the first two factors (public interest in expeditious resolution of litigation and docket control) support of imposition of sanctions. Plaintiff has delayed this adversary proceeding. Plaintiff's failure to comply with any part of the court's order entered January 31, 2018 (dkts. 34, 36) significantly impeded resolution of this action and has caused substantial delay. This adversary proceeding has been pending since April 10, 2017, and does not warrant 11 months before setting a trial.

The third criteria (prejudice to the parties seeking sanctions) strongly supports the sanction. A party is prejudiced if the opposing party impairs the ability to go to trial. *Adriana International Corporation v. Thoeren*, 913 F.2d. 1406, 1412 (9th Cir. 1990). Plaintiff's complaint fails to give Defendants sufficient notice of any purported wrongdoing in connection with loan accounting and the Plaintiff has failed to explain his claims or describe what the lawsuit is about. Defendants have made repeated efforts to understand Plaintiff's case including propounding extensive discovery. Plaintiff failed to adequately respond to discovery, produce any documents, or agree to appear for deposition, which culminated in the court issuing an order

compelling Plaintiff to do so and imposing monetary sanctions in the amount of $2,250.00. Plaintiff has even disregarded the court's order. The close of discovery and pre-trial conference dates are fast approaching and have already been continued twice. Defendants' inability to obtain any discovery while important deadlines are fast approaching is a significant prejudice to Defendants and their ability to defend this lawsuit.

The fourth criteria (policy favoring decision on the merits) does not support the sanction here. Granting a case-dispositive sanction would dispose of all the claims in favor of the Defendants without further trial court proceedings. A decision would not be reached on the merits. However, the Plaintiff has failed to adequately respond to discovery, produce any documents, agree to appear for deposition, or obey the court's order. Without an understanding of the Plaintiff's complaint and Plaintiff's failure to explain his claim, it is impossible for the court to reach a decision on the merits.

The fifth criteria (less severe sanction) also supports the sanction here. All of the components listed in *New Images of Beverly Hills*, 482 F.3d at 1096, are in evidence here. First, a less severe sanction was ordered by the bankruptcy court on January 31, 2018. Mr. Weber was ordered to (1) provide adequate, complete, and amended responses to the Defendants' document requests, interrogatories, and request for admissions within 14 days of entry of the court's order; (2) produce all documents in his possession, custody, and control responsive to Defendants' request; (3) appear for a deposition no later than 30 days from entry of the court's order; and (4) pay attorney's fees and expenses to Defendants' counsel no later than 14 days after entry of the court's order and file a certification of payment with the court within 2 days after payment. None of this occurred. Thus, the court did consider lesser sanctions and implemented them to no avail. Finally, the court warned Plaintiff that "failure to comply with any aspect of this order will result in additional sanctions that may include, but are not necessarily limited to, dismissal and contempt. *See* Fed. R. Civ. P. 34(b)(2)(A); Fed. R. Bankr. P. 7034." Dkt. 34. Plaintiff has had ample notice of a case-dispositive sanction and ignored the court's order.

Because the court grants Defendants' motion to dismiss the adversary proceeding pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v), the court denies Defendants' request to direct that designated facts be taken as established for purposes of the action, as the prevailing party claims, pursuant to Fed. R. Civ. P. 37(b)(2)(A)(i).

Lastly, the Defendants are seeking a total of $1,875.00 in attorney's fees as expenses incurred in the bringing of this motion. The court concludes that the requested fees and expenses are reasonable and necessary for the preparation and prosecution of this motion. Therefore, the court will award Defendants' attorney's fees and expenses totaling $1,875.00. These attorney's fees and expenses shall be paid to Defendants' counsel no later than 14 days after the entry of the court's order and Plaintiff's attorney shall file a certification of payment with the court within two (2) days after payment. *See* Fed. R. Civ. P. 37(a)(5)(C); Fed. R. Bankr. P. 7037 (permitting court to order party or attorney to pay fees).

The court will enter an appropriate minute order.

7. 16-23919-B-13 TONI HERRERA — MOTION TO MODIFY PLAN
SLE-3 Steele Lanphier — 1-26-18 [63]

Tentative Ruling: The Motion to Confirm Second Modified Plan Dated January 26, 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 modified plan filed January 26, 2018, does 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 form Chapter 13 Plan effective December 1, 2017.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,831.75, which represents approximately 2.8 plan payments. By the time this matter is heard, an additional plan payment in the amount of $650.25 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 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.

8. 18-20028-B-13 JPJ-1 — DONALD RIDDLE, George T. Burke — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-21-18 [19]

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

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

First, the meeting of creditors was continued to March 1, 2018, to allow the Debtor to appear with his attorney and be examined as required pursuant to 11 U.S.C. § 343. The Debtor and his attorney appeared and the meeting of creditors was concluded.

Second, the plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) since the plan appears to attempt to pay a debt of his mother's reverse mortgage. Based on the information provided in Debtor's plan and schedules, it does not appear that Debtor has a legal obligation to pay the reverse mortgage.

Third, feasibility depends on the selling or refinancing of property. No evidence of the condition of the real estate market or Debtor's ability to refinance has been presented. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

For the second and third reasons stated above, the plan filed January 13, 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.

9. 15-28829-B-13 WAGMA SAFI MOTION TO INCUR DEBT
MLA-6 Mitchell Abdallah 2-8-18 [130]

Tentative Ruling: Debtors' [sic] Motion to Incur Further Indebtedness for the Modification of Caliber Homes Loans' First Mortgage 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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Caliber Homes Loans ("Creditor"), whose claim the first modified plan filed August 31, 2016, provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,047.56 a month to $1,420.10 a month.

The motion is supported by the Declaration of Wagma Safi. The Declaration affirms the Debtor's desire to obtain the post-petition financing.

Opposition

The Trustee asserts that Debtor failed to make plan payments timely and that the Trustee therefore lacked sufficient funds to pay Nationstar Mortgage/Caliber Home Loans since November 2017. Trustee states that the motion fails to specify if the Debtor made trial loan payments of $1,420.10 for December 2017, January 2018, and February 2018 directly to the lender. Trustee further asserts that the motion fails to specify if the loan will remain in Class 1 or if the plan will be further modified to change the treatment to Class 4.

Response

Debtor states that while she stopped making plan payments to the Trustee, she instead made trial modification payments of $1,420.10 for the months of December 2017, January 2018, and February 2018 directly to loan servicer, Caliber Home Loans, as requested by her lender. Debtor further states that if the court grants Debtor's motion, it will immediately file a second modified Chapter 13 plan changing the treatment of the loan to Class 4. A second modified plan shall be filed, set for hearing, and served within seven (7) days of the date escrow closes on the loan modification.

The court finds that Debtor has the ability to fund the plan and that the post-petition financing is consistent with the Chapter 13 plan, subject to a second modified plan being filed. The motion will be deemed to comply with the provisions of 11 U.S.C. § 364(d) and will be granted.

The court will enter an appropriate minute order.

10. 18-20129-B-13 MICHAEL/ESTHER SPEARMAN
JPJ-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-21-18 [25]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed January 9, 2018, will be confirmed.

The court will enter an appropriate minute order.

11. 17-27330-B-13 ROBERT/SUSAN OBY — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
VVF-1 Aubrey L. Jacobsen — 2-2-18 [50]

HONDA LEASE TRUST VS.

Tentative Ruling: This matter was continued from February 20, 2018, to allow the Debtors to file any opposition by February 27, 2018, and Creditors to file any response by March 6, 2018. Because less than 28 days' notice of the hearing was originally given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtors, 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 matter will be determined at the scheduled hearing.

Honda Lease Trust ("Creditor") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Pilot, VIN ending in 4836 (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 Debtors.

The Rae Declaration provides testimony that Debtors have not made 2 post-petition lease payments, with a total of $764.56 in post-petition payments past due. Additionally, the Debtors have not made 0.99 pre-petition lease payments, with a total of $378.56 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the Vehicle is a lease from Creditor and Debtors have no equity in the property.

Opposition

The Debtors state that they were preparing to bring the lease current when their bank account was illegally accessed and funds were stolen from their account. Debtors have been working with their bank to have the funds returned to the account but state that the process has been longer than anticipated. Debtors were able to make a partial payment of $382.28 on or around February 2, 2018, and state that they will be able to bring the lease fully current no later than March 10, 2018.

No response was filed by Creditor.

The matter will be determined at the scheduled hearing.

12. 18-20033-B-13 DANIEL MCLIND
AF-2 Arasto Farsad

MOTION TO CONFIRM PLAN
1-27-18 [23]

CONVERTED: 03/07/18

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The case having been converted to a Chapter 7 on March 7, 2018, the motion is denied as moot.

The court will enter an appropriate minute order.

13. 16-24635-B-13 MJD-3 — MICHAEL/CLARA LANGTON, Matthew J. DeCaminada — MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGARIA LAW, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS' ATTORNEY(S) 2-12-18 [89]

Final Ruling: No appearance at the March 13, 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, Sagaria Law, P.C. ("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. 60. Applicant now seeks additional compensation in the amount of $1,000.00 in fees and $0.00 in costs. This is a reduction from $1,532.50.

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

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

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would fall twice behind on plan payments due to an increase in monthly utilities and other bills and that there would be post-filing income taxes. The additional services includes the filing and confirmation of two modified plans. 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 Debtors, 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	$1,000.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

14.	17-23337-B-13 JPJ-2	DOUGLAS/TRINA HAMMONS Robert S. Gimblin	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 4-1 1-12-18 [45]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of its Objection to Allowance of Claim of Cavalry SPV I, LLC, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

15. 17-23339-B-13 SCOTT/AGNES STUHR — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 6
JPJ-1 Pauldeep Bains — 1-12-18 [22]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV I, 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. 6-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of $3,318.24. 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 April 12, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 16, 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.

16. 17-24841-B-13 HATEM ABDINE
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-21-18 [56]

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

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

Chapter 13 Trustee objects to confirmation on grounds that the plan cannot be effectively administered. Debtor's plan was initially filed as a Chapter 7 proceeding on July 24, 2017. On December 5, 2017, Bank of America filed a motion for relief alleging that the Debtor failed to make on-going mortgage payments for a total post-petition delinquency of $2,316.96. Additionally, Debtor testified that he incurred post-petition delinquency with regard to The Reserves, his homeowner association dues. The court entered an order converting the case to a Chapter 13 on January 12, 2018. Debtor's plan does not specify a cure of the post-petition arrearages to both Bank of America and The Reserves, including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Debtor filed a response stating that the plan does cure the arrears as "pre-petition" Chapter 13 arrears rather than "post-petition" Chapter 7 arrears. Debtor cites only to § 1301(a) codebtor stay but does not explain its relevance.

Discussion

Upon conversion, the date of filing does not change nor does the fact that the case was originally filed under a different chapter. *In re Wilkinson*, 507 B.R. 742, 752 (Bankr. D. Kan. 2014). This plain language construction is supported by the *Standiferd* court's interpretation and application of § 348(a):

> "Under § 348(a), the conversion of a case from one chapter of the Code to another 'constitutes an order for relief under the chapter to which the case is converted, but . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.' § 348(a) (emphasis added). In other words, a converted case is commenced on the date the initial bankruptcy petition was filed, not on the date it was converted. Thus, the plain language of § 348(a) clearly provides that, upon conversion, 'the case' includes the proceedings that occur both before and after conversion."

Id., quoting from and citing to *Standiferd v. U.S. Trustee*, 641 F.3d 1209, 1215 (10th Cir. 2011). Consequently, when Debtor converted his case from a Chapter 7 to Chapter 13, the date of the filing of the petition did not change and the arrearages owed to Bank of America and The Reserve that were post-petition remain post-petition. Therefore, Debtor's plan must provide for post-petition arrears.

The plan filed January 9, 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.

17. 17-22648-B-13 DONALD TRECO COUNTER MOTION TO DISMISS CASE
RAH-7 Richard A. Hall 2-26-18 [122]
Thru #18

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor 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.

18. 17-22648-B-13 DONALD TRECO MOTION TO CONFIRM PLAN
RAH-7 Richard A. Hall 1-27-18 [109]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated January 27, 2018, 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 plan filed January 27, 2018, does 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 form Chapter 13 Plan effective December 1, 2017.

Second, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. While the Trustee did receive a Class 1 Checklist from the Debtor, it was not for the correct Alaska Federal Credit Union claim. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, feasibility depends on the granting of two motions to value collateral for Alaska Credit Union and Thunder Road Financial. Those motions to value were heard and granted on March 6, 2018.

For the first and second reasons stated above, 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.

19. 17-27451-B-13 LUEGENE SIMPSON MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 1-29-18 [39]

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on January 29, 2018, 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 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 proposed duration of payments is only 4 years and the plan does not propose payment in full of the allowed unsecured claims. The applicable commitment period is 5 years. The applicable commitment period in 11 U.S.C. § 1325(b)(4) is a temporal requirement that determines the minimum duration that a plan must have to be confirmable under 11 U.S.C. § 1325(b)(1)(B). *Danielson v. Flores (In re Flores)*, 2013 U.S. App. LEXIS 18064 (9th Cir. Cal. 2013).

Third, feasibility depends on the granting of a motion to value collateral for the Internal Revenue Service. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and Trustee a stand-alone motion to value the collateral. *See* Local Bankr. R. 3015-1(I).

Fourth, based on the proof of claim filed by Internal Revenue Service (Claim No. 1-1) and Franchise Tax Board (Claim No. 3-1), the plan will take approximately 75 months to complete. This exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The 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.

20. 18-20052-B-13 WANDA MOORE
JPJ-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-13-18 [30]

Tentative Ruling: The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 703.140(b)(11)(C) to exempt a portion of her Whole Life Insurance Policy with State Farm in the amount of $9,5616.76. This exemption is for payments received for a matured life insurance policy. The Debtor testified at the § 341 meeting of creditors that the beneficiary, Anre'A L. Allen, is her son and he is not deceased. The plan pays $0.00 to general unsecured creditors. The claim of exemption under § 703.140(b)(11)(C) is not proper.

Debtor has filed a response stating that it will an amended Schedule C that addresses the Trustee's concerns. No amended Schedule C has been filed with the court as of March 12, 2018.

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

The court will enter an appropriate minute order.

21. 16-28259-B-13 RS-5 — PAULA BOYD, Richard L. Sturdevant — MOTION FOR COMPENSATION BY THE LAW OFFICE OF FINANCIAL RELIEF LAW CENTER FOR RICHARD L. STURDEVANT, DEBTORS ATTORNEY(S) 2-27-18 [115]

DEBTOR DISMISSED: 12/20/2017

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

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

FEES AND COSTS REQUESTED

Richard Sturdevant ("Applicant"), the attorney to late Chapter 13 Debtor Paula Boyd, makes a request for the allowance of $521.02 in fees and $0.00 in expenses. The Debtor did not opt in the Guidelines (dkt. 14, p. 41). The period for which the fees are requested is for December 16, 2016, through October 3, 2017. The Applicant has received $0.00 in this case.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkts, 115, 118.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under

> this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

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

Fees	$521.02
Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

22. 16-20568-B-13 NATALIE PELTON MOTION TO MODIFY PLAN
RJ-6 Richard L. Jare 2-2-18 [87]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 2, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

23. 17-28176-B-13 CHRISTOPHER/PEPPER LEWIS MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 1-29-18 [17]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Motion to Confirm Debtors' First Amended Plan Filed on January 29, 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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 29, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

24. 11-27178-B-13 KAREN PRESCOTT
RK-1 Richard Kwun

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
2-13-18 [119]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

The Motion to Avoid Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. 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 to avoid judicial lien.

This is a request for an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against the Debtor's property commonly known as 3605 Ventana Lane, Shingle Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $34,519.92. An abstract of judgment was recorded with El Dorado County on March 10, 2011, which encumbers the Property. All other liens recorded against the Property total $501,858.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $401,000.00 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 $1,000.00 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.

25. 17-24480-B-13 RENEE MARTIN — AMENDED MOTION TO VACATE DISMISSAL OF CASE
ALB-9 Albert Boasberg — 2-16-18 [110]

DEBTOR DISMISSED: 02/08/2018

Tentative Ruling: The Motion to Reinstate Bankruptcy Chapter 13 Plan Based on Extraordinary Circumstances and Permit the Debtor Have [sic] Confirm Within Thirty Days of the Ruling of the Court Because of No Fault of Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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 deny without prejudice the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justifies the court vacating the order dismissing the case. Debtor asserts that her counsel had filed an amended plan on January 22, 2018, that it was set for hearing on February 6, 2018, but that counsel had mistakenly believed that a proof of service was filed when it in fact was not.

The Chapter 13 Trustee has filed an objection and the Debtor has filed a response. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

Discussion

Relief under Rule 60(b)(1) will be denied because the standard for excusable neglect has not been satisfied. In particular, Debtor's motion fails to adequately address any of the *Pioneer-Briones* factors, *i.e.*, (1) the danger of prejudice to any non-moving party if the dismissal is vacated, (2) the length of delay and the potential impact of that delay on judicial proceedings, (3) the reason for the delay, including whether the delay was within the reasonable control of the movant, and (4) whether the Debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). For that reason alone, Rule 60(b)(1) relief is not warranted. *See Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) ("The court would have been within its discretion [to deny relief] if it spelled out the equitable test and then concluded that [counsel] had failed to present any evidence relevant to the four factors.").

Nevertheless, the court has independently reviewed the *Pioneer-Briones* factors in the context of the Debtor's motion and the record before it. *See Lemoge v. U.S.*, 587 F.3d 1188, 1192 (9th Cir. 2009). Based on that review, the court is not persuaded that relief under Rule 60(b)(1) should be granted.

The motion fails to address the danger of prejudice to creditors if the dismissal order is vacated. When the case was dismissed the automatic stay terminated, which means nothing now precludes creditors from exercising their rights under applicable nonbankruptcy law. Vacating the dismissal does not necessarily reimpose the automatic stay. The Ninth Circuit is clear in that, once terminated, the automatic stay may only be reimposed through an adversary proceeding that requests injunctive relief under § 105(a). *In re Canter*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J. concurring) ("In order to have a vacated stay 'reimposed,' one must ordinarily file an adversary proceeding seeking an injunction under 11 U.S.C. § 105."). Under some circumstances, other courts have held that the stay may be revived when the order that terminated it is vacated. *See State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 & n.8 (10th Cir. 1996). However, the Debtor has not demonstrated or explained how that is applicable, if at all, in this case. Consequently, the first *Pioneer* factor weighs against Rule 60(b)(1) relief.

The second factor, the length of the delay and the potential impact of the delay on the Chapter 13 proceeds, also weighs heavily against Rule 60(b)(1) relief. This Chapter 13 case was initially filed on July 7, 2017. The Debtor's motion to confirm plan, no DCN, was heard and denied on September 9, 2017. The Trustee filed a motion to dismiss case, JPJ-1, which was heard and conditionally denied on November 28, 2017. The Debtor was given 60 days from the entry of order on November 30, 2017, to confirm a plan. Thus, Debtor had until January 29, 2018, to confirm a plan, which the Debtor failed to do. Given that the Bankruptcy Code contemplates confirmation in a relatively short period of time, *see* 11 U.S.C. § 1324(b), "parking" the Debtor in a Chapter 13 case for six months without a confirmed plan is unreasonable delay prejudicial to creditors. *See* 11 U.S.C. § 1307(c)(1). Filing a plan on January 22, 2018, one week before the January 29, 2018, deadline to confirm a plan, and setting the hearing after the confirmation deadline is also unreasonable delay prejudicial to creditors. *Id.*

The court is also not convinced that the Debtor has offered a plausible explanation of the reason for the delay that resulted in the dismissal of this case. The Debtor had 60 days from the entry of the order on November 30, 2017, to confirm a plan. The Debtor did not confirm a plan by January 29, 2018. The Debtor, through counsel, merely filed a plan on January 22, 2018. The failure of Debtor's counsel to file a proof of service with the amended plan is irrelevant to the reason for the delay that resulted in dismissal of this case. The Debtor gives no explanation for why she failed to confirm a plan by the January 29, 2018, deadline. Accordingly, this third factor weighs against Rule 60(b) relief.

As to the fourth factor, the court does not see any bad faith associated with the Debtor's conduct.

In sum, on balance and upon consideration of the totality of the circumstances, the *Pioneer-Briones* factors overwhelmingly weigh against relief from the dismissal order under Rule 60(b)(1). Therefore, the Debtor's request for relief under Rule 60(b)(1) will be denied.

Relief under Rule 60(b)(6) will also be denied. A court may grant relief under Rule 60(b)(6) for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. Relief under Rule 60(b)(6) is limited to errors or actions beyond the party's control. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006); *Cmty. Dental Serv. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 1996). The Debtor does not meet this standard insofar as the Debtor has not demonstrated how the failure to calendar the plan confirmation deadline was somehow outside her control or the control of her attorney.

CONCLUSION

For all the foregoing reasons, the Debtor's motion to vacate is denied without prejudice.

The court will enter an appropriate minute order.

26.	12-38291-B-13 SDB-2	RAYMOND NELSON W. Scott de Bie	MOTION TO AVOID LIEN OF ONEWEST BANK, FSB 2-6-18 [55]

Final Ruling: No appearance at the March 13, 2018, hearing is required.

Debtor's Motion for Order Declaring Lien Satisfied and Released (Rule of Bankruptcy Procedure 5009(d)) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. 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 deny the motion without prejudice.

Debtor moves for a court order declaring that the second deed of trust originally recorded by Mortgage electronic Registration Systems, Inc., solely as nominee for Martgageit, Inc., and now held by OneWest Bank, FSB ("Creditor") against Debtor's residence located at 3025 Beechwood Court, Fairfield, California, has been satisfied and is now released.

OneWest Bank, FSB filed a secured claim on October 30, 2012, in the amount of $17,332.64 as Claim No. 2-1. The account is identified by the last four digits as 4644.

Debtor argues that Creditor's lien was subject to the court's order on a motion to value that established Creditor's secured claim at $0.00, with the balance treated as a general unsecured claim. Dkt. 35. Debtor further asserts that completion of the plan and certification that the estate has been fully administered renders Creditor's claim satisfied, thus releasing the lien.

Debtor seeks an order declaring that Creditor's lien has been satisfied and is released.

Discussion

A request for declaratory relief must be sought as part of an adversary proceeding, not as part of a contested matter. Fed. R. Bankr. P. 9014. Debtor has not properly sought the requested relief.

No points and authorities has been filed providing the court with a legal basis for affirmatively avoiding an otherwise valid lien. The motion does not make reference to any statutory or case law authority for such an affirmative act destroying a creditor's property right. The motion does make reference to Fed. R. Bankr. P. 5009(d), which provides:

> "(d) Order declaring lien satisfied. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint."

(emphasis added). The rule appears to apply to a lien on a creditor's secured claim. The lien, which is on the claim secured by property, must have been "released" by the Chapter 12 or 13 plan.

Debtor has not shown that any lien has been released by the Chapter 13 Plan. The Chapter 13 Plan in this case provides that with respect to the IndyMac Mortgage Services[1] Class 2 secured claim,

> "(d) Lien retention. Each Class 2 creditor shall retain its existing lien until completion of the plan and, unless not required by Bankruptcy Court, entry of Debtor's discharge."

Plan ¶ 2.09(d). While the plan term states the minimum time that a Class 2 creditor's claim will retain its lien, it does not state any affirmative "release" of any such property right of the creditor or the legal basis for such release of a property right.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

[1] IndyMac Mortgage Services is servicer to OneWest Bank, FSB. *See* dkts. 29, 32.