

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 12, 2016 at 1:00 p.m.

1. [15-28906](#)-B-13 SHELLY CLARK MOTION TO CONFIRM PLAN
 SJS-1 Scott J. Sagaria 2-23-16 [[37](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 12, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm First Amended Plan is dismissed without prejudice.

April 12, 2016 at 1:00 p.m.

Final Ruling: No appearance at the April 12, 2016, hearing is required.

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

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

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtors' declaration. Debtors the owner of the subject real property commonly known as 8384 La Porte Way, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of \$250,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$277,773.76. Creditor's second deed of trust secures a claim with a balance of approximately \$100,662.13. 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.

3. [16-20707](#)-B-13 EDWIN GATO
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-24-16 [[24](#)]

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

First, the plan payment in the amount of \$2,282.00 for months 1 through 9 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 \$2,552.00. Although the Debtor has proposed payments of \$2,422.00 per month for months 1-9 and increased payments of \$2,572.00 per month for months 10-60, this still falls short of required aggregate of fees and expenses. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the Debtor is making voluntary retirement contributions in the amount of \$594.90 per month. The Debtor's contributions to a voluntary retirement account above and beyond the mandatory requirements for retirement contributions are diverting funds away from his unsecured creditors. *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012). Ceasing to make these payments would pay an additional \$7,770.00 to general unsecured creditors over the life of the plan after accounting for trustee's fees. The Debtors' response does not address this issue. The plan does not appear to be proposed in good faith.

The plan filed February 9, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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

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

First, the Debtor did not submit proof of his social security number to the Chapter 13 Trustee at the meeting of creditors on March 17, 2016, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to April 7, 2016, to allow the Debtor the opportunity to provide the Trustee with evidence of his social security number. The Debtor did appear at this continued meeting.

Second, the Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition pursuant to 11 U.S.C. § 190(h).

Third, the Debtor has not amended the Statement of Financial Affairs to list the divorce proceeding at Question #8 or the transfer of assets to the ex-spouse at Question #18. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Fourth, the Debtor has not provided the Trustee with the Domestic Support Obligation Checklist. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Fifth, feasibility depends on the granting of motions to value collateral for Franchise Tax Board and Internal Revenue Service. To date, the Debtor has not filed, set for hearing, or served on the respondent creditors and the Trustee stand-alone motions to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Sixth, the Debtor has not filed an amended Means Test to correct for the discrepancy in household size. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed February 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

5. [16-20316](#)-B-13 GRANT PARKISON
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF
PLAN AND MOTION TO DISMISS CASE
3-16-16 [[25](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Because of this, no attorney's fees or costs can not be approved in connection with the confirmation of the plan and counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Second, the Debtor has not filed a Certificate of Completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief pursuant to 11 U.S.C. § 109(h).

Third, the Debtor has a pending Chapter 7 case (case no. 13-30947). On April 8, 2016, the Debtor filed a motion to dismiss the Chapter 7 case, which has not been set for hearing. The Debtor has not complied with 11 U.S.C. § 1325(a)(3).

The plan filed January 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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

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

First, feasibility depends on the granting of motions to avoid liens for Fortis Capitol, Portfolio, and Gloria Bandy. These motions were heard on April 5, 2016, and granted.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$885.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Due to the delinquency in plan payment, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

7. [16-20722](#)-B-13 TEKESTE GHEZEHA
EAT-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
3-22-16 [[15](#)]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 Wells Fargo Bank, N.A.'s objection, the Debtor filed an amended plan on March 28, 2016. The confirmation hearing for the amended plan is scheduled for May 24, 2016. The earlier plan filed February 9, 2016, is not confirmed.

8. [13-35332](#)-B-13 JAMES/IOLANI NEARY
CRG-4 Carl R. Gustafson

MOTION TO MODIFY PLAN
3-3-16 [[107](#)]

Tentative Ruling: The Motion to Confirm Debtors' Third Modified 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to modify without prejudice. The Debtors have responded to the Trustee's objection stating that they will file a fourth modified plan to address the Trustee's issues and cure the default.

9. [16-21732](#)-B-13 MARY TRACY
BHT-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
3-24-16 [[9](#)]

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

CASE DISMISSED 4/01/16

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Order Confirming No Automatic Stay is in Effect Under 11 U.S.C. Section 362(c)(4)(A)(ii) and For In Rem Relief 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.

The court's decision is to deny the motion for relief from stay as moot, the case having been dismissed on April 1, 2016.

10. [16-20937](#)-B-13 FRANK/RONNI STEVENS
JPJ-1 Stephen N. Murphy

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
3-23-16 [[25](#)]

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

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

The Debtors filed an amended plan on March 8, 2016. The Trustee's objection relates to the plan filed February 19, 2016. The confirmation hearing for the amended plan is scheduled for April 19, 2016. The earlier plan filed February 19, 2016, is not confirmed.

11. [15-26339](#)-B-13 WILLIAM/NANCIE DUNHAM MOTION TO CONFIRM PLAN
CK-3 Catherine King 2-22-16 [[93](#)]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated February 22, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 6, 2016. The confirmation hearing for the amended plan is scheduled for May 24, 2016. The earlier plan filed February 22, 2016, is not confirmed.

12. [13-35542](#)-B-13 ANTHONY/RENEE TOKUNO
DJC-4 Diana J. Cavanaugh

MOTION TO MODIFY PLAN
3-1-16 [[64](#)]

Tentative Ruling: The Motion to Confirm Third Modified 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan may not specify the amount or rate at which the Trustee's fees are paid. The Trustee is paid by a percentage fixed by the Attorney General after consultation with the U.S. Trustee pursuant to 28 U.S.C. § 586(e)(1). Therefore, this language must be stricken.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$3,400.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their 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.

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

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

First, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to business income as requested by the Trustee at the § 341 meeting of creditors on March 16, 2016. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Because of this, no attorney's fees or costs cannot be approved in connection with the confirmation of the plan and counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$60.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$60.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has not provided the Trustee with requested copies of all bank statements from July 1, 2015, through January 28, 2016. It cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(3), (4), (6), or § 1325(b)(1)(B).

Fifth, the Debtor's amended Statement of Financial Affairs does not resolve issues related to details Debtor's current business called Be Bright Trucking or the sale of Debtor's dry cleaning business, including details regarding the proceeds of the sale. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Sixth, the Debtor has not listed an amount related to his interest in the a truck or any identifying information related to the truck including the year, make, model, and mileage of the vehicle. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Seventh, the Debtor has not filed an amended Schedule D to properly account for the secured debts related to Debtor's residence and truck. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed February 18, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

14. [12-37750](#)-B-13 ANGELA CARNEVALE MOTION TO SELL
EJS-6 Eric John Schwab 3-30-16 [[85](#)]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

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

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 2300 Edinburgh Drive, Elverta, California ("Property").

The proposed purchaser of the property Russell Pruitt has agreed to purchase the Property for \$203,000.00. The title report at Exhibit B shows that there are no liens on the Property. As supported by the Debtor's declaration, the Debtor asserts that there will be sufficient proceeds to turn over to the Chapter 13 Trustee to pay off her case at 100% to all creditors, estimated to be \$9,910.00.

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.

15. [16-20763](#)-B-13 LAWRENCE/CHYANNE MICALLEF OBJECTION TO CONFIRMATION OF
JPJ-1 Mark A. Wolff PLAN BY JAN P. JOHNSON
3-24-16 [[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 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 plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. There appears to be non-exempt property in the estate in the amount of \$69,037.00 after accounting for the deduction of liens and current exemptions. The total amount that will be paid to unsecured creditors is only \$28,000.00.

Second, the terms for payment of the Debtors' attorney's fees are unclear. The plan does not specify whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Third, the plan payment in the amount of \$5,342.00 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 \$5,521.00. The plan does not comply with Section 4.02 of the mandatory form plan.

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

16. [16-20567](#)-B-13 ROSE RODRIGUEZ
CJO-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-22-16 [[37](#)]

BANK OF AMERICA, N.A. VS.

CASE DISMISSED 4/01/16

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief from Automatic Stay (Real Property) 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.

The court's decision is to deny the motion for relief from stay as moot, the case having been dismissed on April 3, 2016.

17. [16-20672](#)-B-13 PHILLIP NAILS
JPJ-1 Peter G. Macaluso
Thru #18

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
3-23-16 [[26](#)]

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). A written reply has been filed to the objection.

The court's decision is to sustain the objection, deny confirmation of the plan, and allow the Debtor additional time to file, set, and serve an amended plan that resolves the Trustee's issues as requested by the Debtor.

The plan filed February 19, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

18. [16-20672](#)-B-13 PHILLIP NAILS
PPR-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
3-14-16 [[21](#)]

Tentative Ruling: The Objections to Proposed Chapter 13 Plan and Confirmation Thereof 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.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$68,010.20 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 19, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

19. [14-22173](#)-B-13 YOLANDA SWARTOUT
JPJ-2 Eamonn Foster

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-26-16 [[68](#)]

Tentative Ruling: The court issues no tentative ruling.

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

The matter will be determined at the scheduled hearing.

Tentative Ruling: The Application for Approval of Debtors Attorney Fees and/or Costs in Chapter 13 Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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. However, because the court proposes to alter the request for compensation, counsel may appear and be heard.

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

FEES AND COSTS REQUESTED

Luke Garcia ("Applicant"), the attorney to Chapter 13 Debtor ("Client"), makes a request for the allowance of \$7,720.00 in fees and \$385.00 in expenses for a total of \$8,105.00. The period for which the fees are requested is for April 14, 2014, through February 4, 2016.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 67.

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 Client and bankruptcy estate and reasonable.

However, the motion for compensation filed March 15, 2016, states as follows:

The applicant has not received a retainer paid prior to filing. As reflected in that document and in the Bankruptcy Rule 2016 (b) disclosure statement, applicant and the debtor agreed that the initial deposit for legal services and expenses in connection with this Chapter 13 case would be \$0.00.

To date, fees in the amount of \$0.00 have been approved by this court and \$0.00 have been paid by the Chapter 13 Trustee.

Dkt. 63 at 3:25-4:2.¹

¹ The motion begins at page "3" as the first page.

While it appears the latter statement is accurate, the former is not. The Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys filed with petition on June 6, 2014, states as follows:

Initial fees charged in this case are \$ 8,000.00, and of this amount, \$ 1519.00 was paid into retainer by the Debtor before the filing of the petition.

Dkt. 7 at 3.

So, assuming as stated that the Applicant has already received a \$1,519.00 retainer, Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$7,720.00
<i>Less retainer</i>	<i>\$1,519.00</i>
<i>Less "case manager" time:²</i>	<i>\$ 212.50</i>
Allowed Fees	\$5,988.50
Allowed Cost and Expenses	\$ 385.00

² The court will not allow compensation for non-lawyer or paralegal time and is unable to determine if the "case manager" is either, or neither. Therefore, the court will disallow 1.7 hours at \$125 per hour for a reduction of \$212.50.

21. [15-20583](#)-B-13 ROBERT/DIANNA DANIEL
BLG-4 Pauldeep Bains

MOTION TO MODIFY PLAN
2-24-16 [[61](#)]

Tentative Ruling: The Motion to Confirm Second Modified Plan Filed on 2/24/16 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan, provided that (1) the order confirming correct Month 12 to January 2016, and (2) that the additional provision proposed by the Debtors cures all three post-petition installments including a specific post-petition arrearage amount, interest rate, and monthly dividend.

22. [15-29383](#)-B-13 KHASHAYAR ELMI MOTION TO MODIFY PLAN
RJ-3 Richard L. Jare 3-9-16 [[34](#)]

Final Ruling: No appearance at the April 12, 2016, hearing is required.

The Motion to Confirm 1st Modified Chapter 13 Plan has not been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 34 days' notice was provided.

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

23. [16-20587](#)-B-13 TERRY ARNOLD
JPJ-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
3-23-16 [[23](#)]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on April 7, 2016. The confirmation hearing for the amended plan is scheduled for May 24, 2016. The earlier plan filed February 10, 2016, is not confirmed.

24. [16-21793](#)-B-13 ABU ALAMIN MOTION TO EXTEND AUTOMATIC STAY
MLF-1 Jessica R. Galletta 3-23-16 [[17](#)]

Tentative Ruling: The court issues no 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 matter will be determined at the scheduled hearing.

25. [12-29296](#)-B-13 CHRISTOPHER/KELLY WOYTUS
FF-2 Gary Ray Fraley

OBJECTION TO CLAIM OF WELLS
FARGO DEALER SERVICES, CLAIM
NUMBER 2
2-22-16 [[60](#)]

Final Ruling: No appearance at the April 12, 2016, hearing is required.

The Objection to Claim No. 2 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.

Debtors requests that the court disallow the claim of Wells Fargo Dealer Services ("Creditor"), Claim No. 2. The claim is asserted to be in the amount of \$6,560.19. Debtors assert that the claim should be disallowed because this debt was included and discharged in the Debtors' prior Chapter 7 bankruptcy. Debtors received a discharge in their Chapter 7 on March 12, 2012 (case no. 11-46677). The Chapter 1 case was filed on May 14, 2012.

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 Debtors have satisfied their burden of overcoming the presumptive validity of the claim. The Debtors have presented substantial and factual basis to overcome the prima facie validity of the proof of claim. The Debtors do provide exhibits showing a debt owed to Wells Fargo Dealer Services in their Chapter 7 case, the account number associated with WFDS/WDS ends in -2059. Dkt. 63, p. 8. Claim No. 2 filed by Wells Fargo Dealer Services shows an account ending in -4820. Although the two claims are similar, as reflected in the chart below, they are not identical:

Prior Chapter 7 (No. 11-46677) Filed: November 10, 2011 Discharge entered: March 12, 2012	Present Chapter 13 (No. 12-29296) Filed: May 4, 2012
Creditor identified in Schedule F as: WFDS/WDS P.O. Box 1697 Winterville, NC 28590	Creditor identified in Claim No. 2-1 as: Wells Fargo Dealer Services P.O. Box 19657 Irvine, CA 92623-9657
Claim amount: unsecured \$6,546.00 for "repossessed vehicle"	Claim amount: unsecured \$6,560.19 for "car loan"
Account No.: 2059	Account No.: 4082

The Debtors' declaration, however, states the debt discharged in their prior Chapter 7 case is the same debt in the proof of claim filed in this case. The court also notes that the creditor has not refuted the Debtors' assertion that the two claims are the

same or has otherwise responded opposing the objection.¹

Therefore, based on the evidence before the court, the objection to the proof of claim is sustained.

¹ Although not presently before the court, Creditor may have also violated the discharge injunction by filing a proof of claim in this case for a debt discharged in the Debtors' prior Chapter 7 case. *Green Point Credit, LLC v. McLean (In re McLean)*, 794 F.3d 1313, 1320-1321 (11th Cir. 2015).

26. [16-20297](#)-B-13 DALE MILLER
Rick Morin

OBJECTION TO NOTICE OF
POST-PETITION FEES
2-24-16 [[14](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 12, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending objection, the withdrawal being consistent with any opposition filed to the objection, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the objection, and good cause appearing, the objection is dismissed without prejudice.

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 Debtor has provided evidence of his social security number to the Trustee and the continued meeting of creditors was concluded on March 31, 2016. Thus, this is no longer an issue.

Second, the Debtor's certificate of completion from an approved nonprofit budget and credit agency was not received during the 180-day period preceding the date of the filing of the petition. Therefore, the Debtor is not eligible for relief under 11 U.S.C. § 190(h).

Third, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, the Debtor has not provided the Trustee with individual profit and loss statements related to his self-employment for the 6-month period preceding the filing of the case. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Fifth, the Debtor has not amended the petition to include case no. 09-24723 which was a Chapter 13 case filed in the 8-year period preceding the filing of this case. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Sixth, the Debtor has not fully disclosed in Schedule B an interest he may have in community property related to a boat and two vehicles. It cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4).

Seventh, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). The Debtor must pay no less than \$61,440.00 to general unsecured creditors but the plan proposes to pay nothing to Class 7 general unsecured creditors.

Eighth, Section 2.15 of the plan does not list a dividend to be paid to the general unsecured creditors or an approximate amount of the general unsecured debts in this case. Without this information, it cannot be determined if the plan complies with 11 U.S.C. §§ 1325(a)(3), (4), (6), or § 1325(b)(1)(B).

The plan filed February 22, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

28. [16-20799](#)-B-13 JOHN SHAFER
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-24-16 [[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 failed to appear at the originally scheduled meeting of creditors on March 17, 2016, as required pursuant to 11 U.S.C. § 343. Thus, the meeting was continued to April 21, 2016, to allow the Debtor to be examine under oath.

Second, 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).

Third, the Debtor has not provided the Trustee with copies of all pay stubs received between August 1, 2015, and January 31, 2016, as well as bank statements from August 2015 through January 2016. Without these documents, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Fourth, feasibility depends on the granting of a motion to value collateral of Credit Union Loan Source for a 2010 BMW. The Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Fifth, feasibility depends on the granting of a motion to value collateral of Internal Revenue Service for household goods. The Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

The plan filed February 12, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

29. [16-20118](#)-B-13 LESTHER GASTELUM AND ALMA CONTINUED OBJECTION TO
JPJ-1 SAQUELARES CONFIRMATION OF PLAN BY JAN P.
Peter G. Macaluso JOHNSON
2-24-16 [[24](#)]

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.

This matter was continued from April 5, 2016, to give Debtors additional time to provide the Trustee with the required documents. The court will sustain the objection and deny confirmation of the plan for reasons stated below unless the Debtors have resolved the issues.

First, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to income from the operation of a business.

Second, the Debtors have not provided the Trustee with documents related to their business including, but not limited to, a completed business examination checklist, business bank account statements for the 6-month period prior to the filing of the petition, profit and loss statements for November and December 2015, proof of all required insurance, and proof of required licenses and/or permits related to this business. The Debtors have not complied with 11 U.S.C. § 521 and it cannot be determined if the business is solvent and necessary for reorganization.

Third, the Debtors have not amended the Statement of Financial Affairs to include an interest in the business "Saquelares Landscape and Irrigation." Feasibility cannot be properly assessed pursuant to 11 U.S.C. §§1325(a)(4) or (6) without further information regarding the Debtors' interest in this business.

Fourth, the Debtors have not provided the Trustee with a copy of a Broker's Price Opinion (BPO) or appraisal of their residence. The plan cannot be fully or properly assessed pursuant to 11 U.S.C. § 1325(a)(4) until the Trustee has received and reviewed the requested documents pertaining to the value of the property.

Fifth, the plan filed January 21, 2016, does not comply with 11 U.S.C. § 1325(a)(4) as unsecured creditors would receive a higher distribution in a chapter 7 proceeding.

Sixth, the Debtors must complete Means Test Forms B122C-1 and C-2 in their entirety in order to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B).

The plan filed January 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

30. [16-21288](#)-B-13 ARIEL/MARIA BLASE
RK-1 Richard Kwun

CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA,
N.A.
3-4-16 [[10](#)]

Tentative Ruling: This matter was continued from April 5, 2016, to provide the Debtors an opportunity to clarify their motion.

The Motion to Value Secured Claim of Bank of America NA filed by Debtors Ariel and Maria Blase ("Debtors"), and the declaration filed in support of that motion, do not provide the address or any other relevant description of the collateral the Debtors ask the court to value. Both state only that Bank of America's claim is secured by the Debtors' residence. The court has no idea what that residence is, or where it is located.

The petition and Schedules list an address as the Debtors' residence. However, the court will not speculate if that address is accurate or current. It is counsel's obligation to provide the court with accurate information and evidence that support the relief requested. It is not the court's job to find either buried somewhere on the docket.

As stated in the civil minutes dated April 5, 2016, if prior to the continued hearing, counsel files a declaration (1) identifying the address of the Debtor's residence, (2) confirming the residence is subject to the deed of trust referenced in the motion, and (3) confirming that the creditor identified in the motion holds that deed of trust, the court will enter a final order granting the motion and no appearance at the continued hearing will be necessary. Alternatively, if no declaration is timely filed, the motion will be denied without prejudice at the continued hearing.

Since nothing has been filed by the Debtors, the court's decision is to deny the motion to value without prejudice.