

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 10, 2016 at 2:00 P.M.

1. [16-22510](#)-C-13 KEVIN SULLIVAN MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Matthew DeCaminada 4-26-16 [9]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 26, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----.

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-21306) was dismissed on March 14, 2016, for

Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor's Former Case was filed as a skeletal petition and dismissed for failure to the requisite documents timely. Debtor did not have counsel to represent him.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that Debtor filed the instant case on the eve of foreclosure of his real property and that Debtor has been tending to the needs of hi very ill, non-filing spouse which gives cause for the eleventh hour filing. Debtor is currently in the process of gathering all the requisite documents in order to complete the balance of his Schedules and Statements and Chapter 13 Plan. Debtor is scheduled to being employment this month (April 2016) and anticipates earning approximately \$53,000.00 per year. Debtor's

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted

and the automatic stay is extended pursuant to
11 U.S.C. § 362(c)(3)(B) for all purposes,
unless terminated by further order of this
court.

2. 15-29813-C-13 ROBERT/CYNTHIA TURNER
DPC-2 Ashley Amerio

MOTION TO RECONSIDER DISMISSAL
OF CASE
4-21-16 [44]

DEBTOR DISMISSED:
04/26/2016
CO-DEBTOR DISMISSED:
04/26/2016

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, parties requesting special notice, and Office of the United States Trustee on April 21, 2016. 14 days' notice is required. This requirement was met.

The Motion for Order to Reconsider Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

The Motion for Order to Reconsider Dismissal is granted.

Sean and Jennifer Parsons ("Debtor") filed the instant Motion for Order to Reconsider Dismissal on April 7, 2016. Dckt. 25.

The instant case was filed on December 24, 2016 as a Chapter 13. Dckt. 1. Debtor states that the on the morning of the hearing of Trustee's Motion to Dismiss, Debtor's attorney received Notice of the Withdrawal of Motion. However, it appears that the Withdrawal of Motion did not reach the Court before the Tentative Ruling on the matter, or before the hearing. The Court ruled the Debtor's failure to file an Opposition or appear to argue the matter constituted agreement with the matter as submitted and granted the Trustee's Motion to Dismiss Case.

CHAPTER 13 TRUSTEE'S NONOPPOSITION

The Trustee does not oppose the motion. The Debtors are current in plan payments.

DISCUSSION

The court agrees that the Motion to Dismiss was withdrawn and thus should not have been granted. Accordingly, the court will vacate the order dismissing the case. Dkt. 53

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Reconsider Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Reconsider is granted, and the order dismissing the case is vacated. Dkt. 53.

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 8, 2016. Twenty-eight days' notice is required.

The Motion to Value 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 Motion to Value secured claim of Synchrony Bank/Select Comfort, "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as a Sleep Number Bed. The Debtor seeks to value the property at a fair market value of \$500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Synchrony Bank/Select Comfort's purchase money security interest secures a loan with a balance of approximately \$2,310.00. Therefore, the respondent creditor's claim secured by a purchase money security interest is partially under-collateralized. The creditor's secured claim is determined to be in the amount of \$500.00. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral
filed by Debtor(s) having been presented to

the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Synchrony Bank/Select Comfort secured by purchase money security interest recorded against a Sleep Number Bed is determined to be a secured claim in the amount of \$500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. 15-23933-C-13 ROBIN WARD
BLG-3 Paul Bains

MOTION FOR COMPENSATION BY THE
BANKRUPTCY LAW GROUP FOR
PAULDEEP BAINS, DEBTOR'S
ATTORNEY(S)
4-12-16 [85]

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Bankruptcy Law Group, the Attorney for Debtor, ("Applicant") for Robin Ward, ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August, 2015 through January, 2016. Applicant requests fees in the amount of \$5,517.00 and costs in the amount of \$34.86.

The Chapter 13 Trustee filed a statement of nonopposition.

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 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 related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Administration: Staff (.6 hrs, \$51.00); Attorney (4 hrs, \$1,225.00)

Motion for Relief: Staff (.1 hrs, \$8.50); Attorney (4.6 hrs, \$1,610.00)

Motion to Confirm: Attorney (2.7 hrs, \$945.00); Costs (\$15.75)

MTC BLG-2: Attorney (2.8 hrs, \$980.00); Costs (\$19.11)

Motion to Dismiss: Attorney (1.2 hrs, \$420.00)

Motion for Fees: Paralegal (1.5 hrs, \$277.00)

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$5,517.00
Costs	\$34.86

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Bankruptcy Law Group ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bankruptcy Law Group is allowed the fees in the amount of \$5,517.00 and costs in the amount of \$34.86 as a professional of the Estate.

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

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (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(b) (1) (A) 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 Objection to Proof of Claim Number 6 of Bank of the West is sustained, and the claim is disallowed in its entirety.

Leonard Lopez, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Bank of the West ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$182,343.63. Objector asserts that Claim No. 6 filed by Claimant is not validated by any evidence. Further, if it was it is barred by the applicable statute of limitations. Pursuant to California Code of Civil Procedure Section 337 the claimant has four years to recover monies due. Therefore, Claim No. 6 should be denied in its entirety.

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). It is settled law in the Ninth Circuit that 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).

The Chapter 13 Trustee filed a statement of nonopposition.

Discussion

The proof of claim is skeletal in nature. It is unclear what the debt is based on. The proof of claim form is not filled out and there are no supporting documents. Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Bank of the West, Creditor filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 6 of Bank of the West is sustained, and the claim is disallowed in its entirety.

6. 14-24246-C-13 CARL ASMUS AND JODI
SAC-5 CAMPISI ASMUS
Scott CoBen

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCOTT A COBEN AND
ASSOCIATES FOR SCOTT A. COBEN,
DEBTORS' ATTORNEY(S)
4-1-16 [104]

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 1, 2016. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Scott A. Coben & Associates, the Attorney for Debtors, ("Applicant") for Carl Asmus and Jodi Campisi-Asmus, ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 9, 2015 through March 31, 2016. Applicant requests fees in the amount of \$7,230.00 and costs in the amount of \$0.00.

The Chapter 13 Trustee filed a statement of nonopposition.

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 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 related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Document Production (5.3 hrs, \$1,590.00)

Negotiations re Plan Modification and Scheduling: (5.0 hrs, \$1,500.00)

2004 Scheduling: (4.5 hrs, \$1,350.00)

Examination Meeting: (4.9 hrs, \$1,470.00)

Payment Problems: (1.9 hrs, \$420.00)

Fee Application: (2.5 hrs \$750.00)

Total: 24.10 hrs @ \$300.00 per hour = \$7,230.00

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$7,230.00
Costs	\$0.00

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Scott A. Coben & Associates ("Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Scott A. Coben & Associates is allowed the fees in the amount of \$7,230.00 and costs in the amount of \$0.00 as a professional of the Estate.

7. 16-20347-C-13 ROBERT CAMPBELL
Ronald Holland

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.

Tentative Ruling: The Objection to Plan 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor U.S. Bank, N.A. opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Prior

The court's decision was to continue the hearing on the Objection to 2:00 p.m. on May 10, 2016, to allow for discovery on the issue of ability to perform the plan. On or before April 22, 2016, Debtor shall file and serve opposition, with Replies, if any, filed and served on or before April 29, 2016.

Debtor's Opposition

Debtor states that he is current on plan payments and that he fully expects to fund the chapter 13 Plan as proposed, based on the current and anticipated income to be received from his employment contract with CHC or under consulting contracts.

Trustee's Response

The Trustee reiterates that he objects to the feasibility of the plan. (See matter 8 below).

Creditor's Reply

The Debtor's anticipated future income remains speculative at this time based on the uncertainty of when the change in income will occur. Therefore, it is still unclear if the proposed Chapter 13 plan is feasible and the Plan cannot be confirmed.

Discussion

Based on the evidence presented to the court, the court is not convinced that Debtor will have sufficient funds to fund the Plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed
by U.S. Bank, N.A. having been presented to the
court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to confirmation
the Plan is sustained and the proposed Chapter 13
Plan is not confirmed.

8. 16-20347-C-13 ROBERT CAMPBELL
DPC-1 Ronald Holland

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
3-9-16 [22]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. It is not clear that Debtor can afford the plan payments. Debtor's plan calls for payments of \$6,300 for six months and \$11,113 for 54 months.

Prior

The court's decision is to continue the hearing on the Objection to 2:00 p.m. on May 10, 2016, to allow for discovery on the issue of ability to perform the plan. On or before April 22, 2016, Debtor shall file and serve opposition, with Replies, if any, filed and served on or before April 29, 2016.

Debtor's Opposition

Debtor states that he is current on plan payments and that he fully expects to fund the chapter 13 Plan as proposed, based on the current and anticipated income to be received from his employment contract with CHC or under consulting contracts.

Discussion

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----
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The Motion to Value secured claim of Golden 1 Credit Union, "Creditor," is granted.
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The Motion filed by Debtor Marcy Ann Vaughn ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Volkswagen Passat Sedan TD ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$13,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in March 21, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$24,758.45. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$13,500. See 11 U.S.C. § 506(a). The valuation motion pursuant to

Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Marcy Ann Vaughn ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2013 Volkswagen Passat Sedan TD ("Vehicle") is determined to be a secured claim in the amount of \$13,500, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$13,500 and is encumbered by liens securing claims which exceed the value of the asset.

10. 15-29965-C-13 DORIAN PARKER
WW-2 Mark Wolff

CONTINUED MOTION TO CONFIRM
PLAN
2-1-16 [23]

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

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 8, 2016. Twenty-eight days' notice is required. This requirement was met.

The Motion to Value 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 Motion to Value secured claim of HSBC Bank USA, N.A., "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 127 Rutherford Drive, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$228,557 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$337,771.47. HSBC Bank USA, N.A.'s second deed of trust secures a loan with a balance of approximately \$50,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Bank USA, N.A.'s secured by a second deed of trust recorded against the real property commonly known as 127 Rutherford Drive, Vacaville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$228,557 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 12, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Chapter 13 trustee opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of HSBC Bank. To date, Debtor has not filed such motion.

At the time of filing this objection on April 12, 2016, Trustee asserted that Debtors had not filed a motion to value the collateral of HSBC Bank upon which the plan relied. However, the docket reflects that on April 8, 2016, Debtors had filed such motion, Dckt. 41, Dckt Control No. PGM-1. The court has granted such motion to value, resolving Trustee's only basis for objection.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on March 2, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Value 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 8, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-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 Motion to Value secured claim of Sterling Jewelers Inc., dba Jared Galleria of Jewelry, "Creditor," is set for evidentiary hearing on [DATE] at [TIME].
--

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject personal property described as a watch and a 2 carat diamond ring ("Jewelry"). The Debtors seeks to value the property at a fair market value of \$2,500 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

Debtor purchased the Jewelry from Sterling Jewelers Inc., dba Jared Galleria of Jewelry ("Creditor") on or about September 2014, with a balance owing of approximately \$13,265.25. Therefore, Debtor asserts that the Creditor's claim secured by the Jewelry is under-collateralized, and creditor's secured claim should be determined to be in the amount of \$2,500. See 11 U.S.C. § 506(a).

CREDITOR'S OBJECTION

Creditor objects to Debtor's Motion to Value, estimating the value of the subject property to be in excess of \$12,501.21. Creditor argues that the purchase price of Jewelry was for a total sum of \$12,770.10 purchased on September 21, 2014. Debtor made a small partial payment, and the remaining balance is \$12,501.21. Creditor asserts that the value of the Jewelry is in excess of the balance remaining. Creditor proffers the affidavit of Kathy Anderson, a Bankruptcy Coordinator for Creditor. Such affidavit attests to the above information.

DEBTOR'S RESPONSE

Debtor responds to Creditor's opposition, stating that Creditor's assertion that the value of the Jewelry is in excess of \$12,501.20 is based on the affidavit of a bankruptcy coordinator, not an expert in the valuation of jewelry. While Debtor's opinion is a lay opinion, Creditor's opposition is based on hearsay, and Creditor declarant is not qualified to offer an opinion as to the Jewelry value amount. Creditor declarant lacks personal knowledge, and is based on hearsay, and does not account for the present condition.

Debtor points to a specific statement made by Creditor as to the value of the Jewelry, that "the purchases were in the amount of \$12,770.10...upon the purchase price, the jewelry has a value in excess of \$12,501.21." Such a statement is both misleading and inaccurate as to the value of the items purchased. Upon the review of the sales slip, the "Tag Heuer Watch" had a "Retail" price of "\$3,485.00" and a "sold" price of \$3,485.00", while the second item purchased had a "Sold" value of "\$7,400.00" which together total \$10,885.00, not "in excess of \$12,501.21", as there was a "trade-in" discount of "\$6,100.00", which is not included in the affidavit.

DISCUSSION

The court agrees with Debtor that Creditor's opposition is lacking. Creditor offers no evidence or declaration upon which the court may rely to substantiate the claim that, as stated in the opposition, "[t]his particular jewelry does not depreciate" Dckt. 26. Merely stating such a assertion does not make it so-in fact the general rule is that most goods will have depreciated nearly two years after purchase and use. Creditor has not identified what is so remarkable about these particular pieces of jewelry, a Tag Heuer Watch and a 2 carat diamond ring, that they retain almost 100% of the value they held upon the date of purchase. Debtor further points out that the receipts submitted identify that in fact the value upon purchase was not an asserted value of \$12,770.10, but closer to \$10,885.00, as Creditor does not discount the sale tax (\$1285.12) or a "salesperson" fee (\$149.99). Thus, it appears to not only have retained almost 100% of its value, but increased in value according to Creditor's assertions.

However, while the court acknowledges that Creditor's asserted affidavit is lacking and proffered valuation is nonsensical, Creditor has here voiced opposition to the value asserted by Debtor. The court will continue this matter for thirty days in order to permit Creditor to obtain an actual verified appraisal of the Jewelry. Creditor is to note that the opinion of a bankruptcy coordinator who has no personal knowledge of the particular jewelry in question will not be acceptable as a verified appraisal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is continued to June 14, 2016 at 2:00 p.m.

IT IS FURTHER ORDERED that Creditor Sterling Jewelers Inc., dba Jared Galleria of Jewelry is to submit a verified appraisal to the court by May 27, 2016.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 12, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 trustee opposes confirmation of the Plan on the basis that:

1. Debtor appears to be over median income. Debtor lists ordinary and necessary business expenses of \$2,034. This deduction would be appropriately be used on form 122C-2. If Debtor completed the form properly, his household income of \$101,164.44 causes him to be over median income. Median income for household of 5 is \$89,840.
2. Debtor's plan is not his best efforts under 11 U.S.C. § 1325(b). Debtor is above median income proposing to pay \$1,995 per month for 60 months. Debtors fails to propose all disposable income into the plan. Debtor has a history of receiving large tax refunds, and he and spouse are to receive \$9,942 in combined refunds for 2015. In 2014, Debtor received \$11,459 in refunds. Debtor fails to propose these payments into the plan.

3. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Jared Galleria of Jewelry, set for hearing on the same date of this motion.
4. Debtor's plan may fail chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).
 - a. Debtor has failed to report all assets. Debtor admitted at his 341 meeting on April 7, 2016 that his wife owns 2 horse trailers that are not reported on schedule B.
 - b. On Schedule C, Debtor exempts his non-filing spouse's bank account and his mechanics tools and toolbox under CCP 703.140(b)(5) but fails to exempt an amount. Instead Debtor claims 100% fair market value. It appears Debtor may not be able to use the claimed exemption as 100% of fair market value, fails to designate an amount and the Debtor is only allowed a certain amount under the exemption code.

The court notes that although Debtors have filed the motion to value the collateral of Jared Galleria Jewelry, resolving one of Trustee's basis for objection, Debtor has not addressed the remaining Trustee's objections, including that Debtor appears over the median income, that Debtor is not making his best efforts in this plan, and that Debtor's plan may fail liquidation analysis. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 12, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor lists CLC Consumer Service on Schedule D twice. In 2.1, the claim amount owed is stated to be \$150,525.00. In 2.2, the claim amount stated to be owed is \$51,540.00. Debtor refers to the claim under 2.1 of the plan as a deed of trust and second claim under #2.2 as arrearages. However it appears that it is one claim owed to CLC Consumer Services. Further in the plan, treatment for the claim begins in section 2.08 where Debtor lists \$50,000 in arrears, the arrearage dividend is left blank and the monthly contract installment is \$833.00. In section 6.02 of the plan, Debtor instructs Trustee to hold payments to CLC Consumer Service until a judgment or settlement is reached as to the validity of the claim. However there is no record of any pending litigation with regard to this claim.

2. The plan does not propose to pay all priority claims 11 U.S.C. § 1322(a)(2). On March 15, 2016, IRS filed court claim #1, claiming \$3,467.10 in priority tax owed by Debtor. The priority portion of the IRS claim is not provided for in Debtor's plan.
3. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of the Internal Revenue Service, which is set for hearing on April 26, 2016.
4. Section 2.06 of the plan reports paying counsel Cindy Lee Hill \$6,000 in attorneys fees prior to filing. Debtor left the balance owed to counsel as blank. It appears that counsel has been paid in full but the plan leaves the additional fees portion blank. Trustee is unable to determine if additional fees are owed or not.

The court notes that Trustee has raised some troubling concerns as to the clarity of the plan and the classification of certain claims. Although the court has granted the motion to value the Internal Revenue Service claim upon which the plan relies, Trustee's remaining objections remain outstanding. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. 14-30795-C-13 STEVEN ASHLEY AND TROY
CLH-3 NEELY
Cindy Lee Hill

MOTION TO MODIFY PLAN
4-5-16 [40]

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2016. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee opposes Debtor's motion, stating that it is unclear what the plan the proposed dividend to unsecured creditors is. It appears Debtors are reducing the length of the plan from 60 months to 36 months, however the plan and motion differ. The proposed plan states 6% which the supporting motion states 9.5%.

DEBTOR'S RESPONSE

Debtors respond, clarifying that the proposed dividend to unsecured creditors would remain at 9.5% to unsecured creditors.

DISCUSSION

The trustee's only basis for opposition having been clarified, the court will grant the motion and confirm the plan, and the order confirming plan is to contain the clarification made by Debtor.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is granted, and the Plan filed April 5, 2016 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language: "IT IS FURTHER ORDERED that the plan provides for a proposed dividend to unsecured creditors of 9.5%." Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. 16-22681-C-13 KRISTINE SCHARER
HDR-1 Harry Roth

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
5-2-16 [11]

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

The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Extend Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion Extend Automatic Stay, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Extend Automatic Stay.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Extend Automatic Stay having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.
