UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 3, 2015 at 10:00 a.m.

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1. 13-29800-B-13 CAH-8 — JOSE ARANDA AND FAVIOLA VALENCIA-ARANDA — Michael David Croddy — MOTION TO INCUR DEBT 5-5-15 [131]

Tentative Ruling: The Motion to Incur Debt 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 court's decision is to deny the motion to incur debt.

The Debtors' motion seeks permission to purchase a used 2011 Mazda 3, the total amount financed of which is $14,947.25, with one monthly payment of $500.00 and subsequent payments of $428.61 per month for 72 months. The interest rate is 27.28%. Debtors will be trading in their 1993 Honda Civic in conjunction with this transaction.

Opposition by Chapter 13 Trustee

Jan Johnson, Chapter 13 Trustee, objects to the Debtors' motion as the Debtors are delinquent $2,223.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,223.00 will also be due. The Debtors have also failed to file amended Schedules I and J to demonstrate their ability to pay all future plan payments, projected living expenses, and the new debt pursuant Local Bankr. R. 3015-1(i)(1)(A) and (C).

Opposition by Registered Interpreter

Patricia George, a registered interpreter in California, objects to the Debtors' motion on the grounds that Debtors lack the ability to incur and pay off new debts. As evidence, Ms. George asserts that Debtors failed to pay her for her interpreting services and also failed to pay other interpreters.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtors do not address the reasonableness of incurring debt to purchase a used vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts.

The Debtors currently own a 1993 Honda Civic, and there is no indication why this vehicle must be replaced.

Additionally, the transaction is not in the best interest of the Debtors. The loan calls for a substantial interest charge – 27.28%. Moreover, it is unclear to the court how in good faith the Debtors could propose to purchase a vehicle while being delinquent to the Trustee in potentially $4,446.00.

For the reasons stated above, the motion is denied.

2. 15-23800-B-13 JOAN HIRONAKA MOTION TO EXTEND AUTOMATIC STAY
DMD-1 Daniel M. Davis 5-19-15 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Extend the Automatic Stay Pursuant to 11 U.S.C. 362(c)(3)(B) As To All Creditors is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

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

Joan Hironaka ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case (No. 14-25365) was dismissed on February 4, 2015, after Debtor failed to make plan payments (Dkt. 23). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor here states that she is now in a better position to comply with the plan payments because she now has a boarder who will help make the monthly plan payments of $445.00 over a 60-month period. The previous plan required monthly plan payments of $853.00 for 36 months. Also, in the previous plan debtor was required to pay on a vehicle, which is no longer included in the current plan.

The Debtor has sufficiently rebutted by clear and convincing evidence the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

3.	15-21303-B-13 DBJ-1	ROBERT MACKENZIE AND SADHANA JONES Douglas B. Jacobs	MOTION TO CONFIRM PLAN 4-15-15 [21]

Tentative Ruling: The Motion to Amend Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 confirm the first amended plan, subject to the order stating the following:

The Debtors shall pay the IRS the entire claim amount by increasing their plan payment from $662.00 per month to $1,229 per month to account for the debt to the IRS and administrative fees.

Additionally, the Debtors have paid a total of $1,500.00 to the Trustee through April 25, 2015. Commencing May 25, 2015, monthly plan payments shall be $1,229.00 for the remainder of the plan. The amount of $1,229.00 is a slight increase from the amount stated in the Trustee's opposition in order to pay the IRS claim in full.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

4.	15-22805-B-13 JPJ-1	AHMED CHARTAEV Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 5-14-15 [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)(3) & (d)(1) and 9014-1(f)(1). 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 Trustee's objection.

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

First, the Debtor did not appear at the first meeting of creditors set for May 7, 2015, as required pursuant to 11 U.S.C. § 343.

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

Fourth, 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).

Fifth, the Debtor has not provided the Trustee with copies of certain items including, but not limited to, a completed business examination checklist, income tax returns for the two year period to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses. The Debtor has not complied with 11 U.S.C. § 521.

Sixth, the Debtor has not listed his income earned in 2013, 2014, and 2015 year-to-date on Questions #1 or 2 in the Statement of Financial Affairs filed April 7, 2015. Additionally, the Debtor has not completed Question #3 for payments made to creditors within the 90 days immediately preceding the commencement of this case. Further, the Debtor has not completed Questions #18-25 in connection to the business that he owns and operates, Cal Equity LLC. Without this information, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)6).

Seventh, the Debtor cannot fund the proposed plan payments of $500.00 with a negative monthly net income.

Eighth, the Debtor has not amended his petition to list all bankruptcy cases filed within the 8-year-period preceding the filing of this case. Debtor's withholding of these case filing is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Ninth, the Debtor has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2).

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

5. 14-25907-B-13 ROBERT UNGER MOTION TO INCUR DEBT
EJS-1 Eric John Schwab 5-12-15 [26]

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

The court's decision is to grant the motion to incur debt.

The motion seeks permission to purchase a 2013 Volkswagen Jetta, the total purchase price of which is $14,400.00, with monthly payments of $268.81 over a period of 72 months at 11.31% interest. A down payment in the amount of $2,000.00 will also be sourced to commission funds earned by the Debtor. The Debtor is current on plan payments and asserts that his most recent payment of $11,885.00 on May 7, 2015, will pay off his plan early and that it will be completed at 100% to all timely filed and allowed creditors. Additionally, the Debtor can afford the monthly loan payment and his other living expenses in the absence of the plan payment. Debtor's projected Schedule I and J and current pay stubs are provided as Exhibit C, Dkt. 29.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

6. 14-22014-B-13 CA-1 | BRANDY COGGINS
Michael David Croddy | MOTION FOR COMPENSATION FOR MICHAEL D. CRODDY, DEBTOR'S ATTORNEY
5-13-15 [41]

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

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

Michael Croddy ("Applicant"), the attorney to Brandy Coggins ("Client"), makes his first interim request for the allowance of fees in the amount of $5,437.50 and expenses in the amount of $434.30. After application of the $1,525.00 retainer and the $281.00 paid to counsel for the filing fee, a total of $4,065.80 in additional compensation is sought by this motion. The Client has opted out of the Guidelines (Dkt. 1, p. 43). The period for which the fees are requested is for January 24, 2014, through June 3, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 44).

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.

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

Additional Fees	$4,065.80
Costs and Expenses	$0.00

7. 13-32716-B-13 NATHANIEL GOORE
CJO-1 David M. Alden

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
5-15-15 [54]

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

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

The motion filed by Green Tree Servicing, LLC ("Movant") seeks court approval to allow Nathaniel Goore ("Debtor") to enter into and finalize a loan modification with Movant. The parties have agreed to a loan modification which provides for a lower interest rate and the capitalization of arrears into a modified principal balance. The loan modification agreement is provided as Dkt. 56, Exhibit 1.

The motion is supported by the a Notice of Joinder by Debtor in Support of Creditors' [sic] Motion for Court Consent to Enter Into Loan Modification Agreement. The notice of joinder affirms Debtor's desire to obtain the post-petition financing.

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

8.	14-27917-B-13 JPJ-3	GARY DELFINO AND JAQULINE NERUTSA Scott J. Sagaria	OBJECTION TO CLAIM OF CALVARY SPV I, LLC, CLAIM NUMBER 1-5 4-2-15 [59]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

The court's decision is to sustain the objection to Proof of Claim Number 1-5 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 1-5 ("Claim"). The claim is asserted to be in the amount of $1,000.21. Objector asserts that the statute of limitations for collection of this debt has expired.

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). 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).

Objector asserts that the statute of limitations for collection of this debt has expired. Documents attached to the proof of claim show that the last payment on the account was made on March 2, 2005, which is more than four years prior to the filing of the petition. The Statute of Limitations for commencing collection actions on debtors of this type is 4 years pursuant to California Code of Civil Procedure § 337. The state statute limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

9. 14-26818-B-13 MARIE TABAREZ
JPJ-2 James L. Keenan
Thru #10

OBJECTION TO CLAIM OF RBS CITIZENS, CLAIM NUMBER 3-1
4-2-15 [45]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

The court's decision is to sustain the objection to Proof of Claim Number 3-1 of RBS Citizens and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of RBS Citizens ("Creditor"), Proof of Claim No. 3-1 ("Claim"). The claim is asserted to be unsecured in the amount of $3,410.72. Objector asserts that the statute of limitations for collection of this debt has expired.

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). 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).

Objector asserts that the statute of limitations for collection of this debt has expired. Documents attached to the proof of claim show that the last payment on the account was made on April 6, 2009, which is more than four years prior to the filing of the petition. The Statute of Limitations for commencing collection actions on debtors of this type is 4 years pursuant to California Code of Civil Procedure § 337. The state statute limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

10. 14-26818-B-13 MARIE TABAREZ
JPJ-3 James L. Keenan

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2-1
4-2-15 [49]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV I, LLC has been set for hearing on at least 44-days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the

court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Proof of Claim Number 2-1 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 2-1 ("Claim"). The claim is asserted to be unsecured in the amount of $7,990.41. Objector asserts that the statute of limitations for collection of this debt has expired.

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). 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).

Objector asserts that the statute of limitations for collection of this debt has expired. Documents attached to the proof of claim show that the last payment on the account was made on April 27, 2009, which is more than four years prior to the filing of the petition. The Statute of Limitations for commencing collection actions on debtors of this type is 4 years pursuant to California Code of Civil Procedure § 337. The state statute limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

11.	15-21818-B-13 JPJ-1	DONIA WILLIAMS Mary Ellen Terranella	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-23-15 [17]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

There being no objection to confirmation, the plan filed March 8, 2015, will be confirmed.

12. 13-30720-B-13 LEILA MONDARES — MOTION TO MODIFY PLAN
TJW-4 Timothy J. Walsh — 4-13-15 [46]

Tentative Ruling: The Motion for Order to Confirm First Modified Chapter 13 Plan Filed April 13, 2015, 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 filed April 13, 2015, does not properly account for all payments the Debtor has paid to the Trustee to date. Because of this, it appears that the Debtor is delinquent to the Trustee in the amount of $2,710.00, which represents approximately 1 payment under the terms of the previously confirmed plan. By the time this matter is heard, an additional payment of $2,200.00 will also be due. It does not appear that the Debtor is able to make the proposed plan payments. Until all previously paid funds are accounted for, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(6).

Second, it appears that the plan proposes an impermissible modification of the secured claim of Coldwell Banker Mortgage and does not comply with 11 U.S.C. § 1322(b)(2) as there is no evidence that the lender has consented to such a modification.

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

13. 14-25623-B-13 ROMAN FILIMOSHYN — MOTION TO MODIFY PLAN
MS-2 Mark Shmorgon — 4-21-15 [32]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Motion to Confirm the Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on April 21, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

14. 14-30623-B-13 KRISTIN BROWN
CMO-6 Cara M. O'Neill

MOTION TO CONFIRM PLAN
4-9-15 [73]

CASE DISMISSED 05/17/15

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

15. 14-25625-B-13 DOUGLAS THURSTON MOTION TO RECONSIDER
DMB-2 Catherine King 5-12-15 [91]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Reconsideration of Motion to Avoid Judicial Lien (CK-5) Under 11 U.S.C. Section 502(j) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

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

The court's April 15, 2015, at 10:00 a.m. pre-hearing disposition incorrectly stated that Item #6 Motion to Avoid Lien of Sheila Foley Gildea to be a (f)(1)-final ruling. It should have been a (f)(2)-tentative ruling since only 18 days' notice was given.

Due to Item #6 being listed as a final ruling, Creditor's attorney states that Court Call sent his office an email canceling his appearance and that he had learned of this cancellation the morning of the hearing on April 15, 2015, at 9:35 a.m. (Brady Declaration, Dkt. 74). Creditor's attorney tried to reinstate the item on calendar but could not do so. Creditor's attorney was told by the clerk's office that he had to file a motion to reconsider.

Due to the court's error and Court Call's phone cancellation, the court will grant the Motion to Reconsider. The order of April 15, 2015, avoiding Creditor's lien (Dkt. 71) is vacated. The judgment lien of Sheila Foley Gildea, California Superior Court for Tehama County Case No. 63525, recorded on April 2, 2012, with the Shasta County Recorder, against the real property commonly known as 19290 Eighmy Road, Cottonwood, California, is not avoided. However, this does not affect the court's order of May 9, 2015 [Dkt. 89] disallowing this Creditor's claim in Proof of Claim No. 6.

16. 14-32125-B-13 RICK VENTURA MOTION TO MODIFY PLAN
RJ-2 Richard L. Jare 4-29-15 [45]

Tentative Ruling: The Motion to Modify 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 filed April 29, 2015 will take approximately 62 months to complete, which is 12 months longer than the proposed duration of payments of 50 months. Pursuant to § 1.03 of the mandatory form plan, monthly payments may only continue for an additional 6 months.

Second, feasibility depends on the granting of a motion to value collateral of Travis Credit Union for a vehicle. The Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value collateral pursuant to Local Bankr. R. 3015-1(j).

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

17. 14-32325-B-13 AMELIA PARRISH
HSM-3 Mark A. Wolff
Thru #19

OBJECTION TO CONFIRMATION OF PLAN BY KIMBERLY J. HUSTED FORMER CHAPTER 7 TRUSTEE
5-14-15 [59]

Tentative Ruling: The Objection to Debtor's 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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtor's plan does not provide for any payments to Chapter 7 administrative creditors. Section 2.07 of Debtor's plan provides payments in the amount of $0.00 to the Chapter 7 administrative creditors. The plan, as proposed, appears not to have been proposed in good faith as required under 11 U.S.C. § 1325(a)(3).

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

18. 14-32325-B-13 AMELIA PARRISH
JPJ-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-14-15 [55]

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)(3) & (d)(1) and 9014-1(f)(1). 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 provided the Trustee with copies of payment advices or other evidence of income. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, the Debtor has not provided the Trustee with a copy of her 2014 tax return. Thus, the Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Trustee cannot pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment of $0.00 as specified in the Debtor's plan filed April 7, 2015.

Fourth, the Debtor has not amended the Statement of Financial Affairs to list Debtor's repayment of a personal loan of $5,000.00 to a family member in 2014.

Fifth, the Debtor has not accounted for the increase in monthly net income of $512.00 for the final 2 years of the plan once the retirement loan is paid in full. Until the Debtor amends the Schedules to provide for the increased monthly net income for the last 2 years of the plan, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6).

Sixth, the plan filed April 7, 2015, 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.

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

19. 14-32325-B-13 AMELIA PARRISH
MDE-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR TOYOTA MOTOR CREDIT CORPORATION
5-13-15 [51]

Tentative Ruling: The Objection to Confirmation of 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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtor's plan filed April 7, 2015, does not provide Toyota Motor Credit Corporation ("Creditor") adequate protection on its claim secured by personal property commonly described as a 2013 Toyota Camry, VIN ending in -314228. Although the Debtor's plan does propose to provide for the total secured claim as required, Debtor has provided an interest rate of 3.50% on the claim. This interest rate is less than the original interest rate of 5.09% and less than the interest per annum of 5.00% (3.25% + 1.75% for risk adjustment) using the formula approach as set forth in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

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

20. 15-20128-B-13 JOSHUA/MARILYN JOHNSON MOTION TO CONFIRM PLAN
JME-1 Julius M. Engel 4-10-15 [40]

Tentative Ruling: The Motion to Confirm 1st Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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, the Chapter 13 Trustee is unable to fully assess the feasibility of the plan. The Debtors have not provided the Trustee with a copy of an income tax return for the most recent year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtors' plan proposes to pay 100% to unsecured creditors. The Trustee calculates that the plan will take approximately 89 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

21.	14-21629-B-13 DPR-1	ROBERT MOSIER AND LYNNE CALVIN-MOSIER David P. Ritzinger	MOTION TO DISMISS CASE 4-29-15 [26]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Debtor's [sic] Motion for Voluntary Dismissal of Chapter 13 Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case as requested by the Debtors.

Debtors seek dismissal of their case because Co-Debtor Robert Mosier was determined to be totally disabled in July 2014, lost his employment, and the Debtors are no longer capable of making their Chapter 13 plan payments. There are no other motions pending in this case and Debtors have made no arrangements or agreements with any creditor or other person in connection with their request for dismissal.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

22. 15-22932-B-13 SHARON WILDEE
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-14-15 [23]

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)(3) & (d)(1) and 9014-1(f)(1). 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 continue the objection, the conditional motion to dismiss, and the confirmation hearing to June 10, 2015, at 10:00 a.m., the date of the hearing of Debtor's motion to value collateral of GM Financial. *See* Local Bankr. R. 3015-1(j). If the valuation motion is denied, the court may also deny confirmation and/or dismiss the case.

It cannot yet be determined whether the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is continued and the plan is not confirmed.

23. 13-32736-B-13 GARY SHULUK
CA-1 Michael David Croddy

MOTION FOR COMPENSATION FOR MICHAEL DAVID CRODDY, DEBTOR'S ATTORNEY
5-11-15 [57]

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

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

Michael Croddy ("Applicant"), the attorney to Gary Shuluk ("Client"), makes his first interim request for the allowance of fees in the amount of $5,550.00 and expenses in the amount of $346.36. After application of the $2,000.00 retainer and the $281.00 paid to counsel for the filing fee, a total of $3,615.36 in additional compensation is sought by this motion. The Client has opted out of the Guidelines (Dkt. 1, p. 40). The period for which the fees are requested is for July 8, 2013, through June 3, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 60).

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.

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

Additional Fees	$3,615.36
Costs and Expenses	$0.00

24.	11-31037-B-13 CJY-8	CHRISTOPHER/SHELLI BECK James D. Pitner	MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRIEND AND YOUNGER, PC FOR JAMES D. PITNER, DEBTORS' ATTORNEY(S) 4-28-15 [136]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Application for Additional Fees and Expenses 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 grant the motion for compensation.

As part of confirmation of the Debtors' Chapter 13 plan, the James Pitner ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). In the Order Confirming Plan dated September 7, 2011, the court authorized payment of fees and costs totaling $3,500.00 (Dkt. 54), which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Of the total fees authorized, $2,000.00 was paid prior to the filing of the petition and $1,500.00 has been paid through the plan. The debtor's attorney now seeks additional compensation, in the amount of $3,602.50 in fees ($7,102.50 - $3,500.00 = $3,602.50). This amount differs from the amount of $3,600.00 provided in Applicant's motion, which the court finds was a scriveners error.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 141).

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

Applicant asserts that it performed substantial and unanticipated work both pre- and post-confirmation. The Applicant states that the unanticipated work includes completing a second motion to value collateral, negotiating a stipulation on that motion to value collateral, filing two motions to approve a short sale and an order for shortening time on one of the motions to approve short sale, drafting and filing three plan modifications, and preparing and filing two amendments each to schedules I and J. According to the Applicant, Debtors' attorneys have also taken several phone calls from Debtors and their creditors to resolve issues with proofs of claim, non-received payments, issues related to the short sale of Debtors' real property and litigation outside of the bankruptcy. The Applicant provides in its "Description of Services" (Dkt. 141, Exh. A) which work was anticipated and which were not by marking each matter with "A" for anticipated or "U" for unanticipated. To show good faith, the applicant has also removed previously billed unanticipated matters so as to reduce the total additional compensation being sought.

The court finds the hourly rates reasonable and that the applicant effectively used appropriate rates for the services provided. The court finds that the services

provided by the Applicant were substantial and unanticipated, except for the following work:

1. **Work performed on May 13, 2011, May 17, 2011, and June 2, 2011, which relate to modifying the plan pre-confirmation** - As the Applicant has indicated in its motion, "the work completed in a typical Chapter 13 bankruptcy would include . . . preparing and filing one Motion to Modify Plan to conform to the claims filed . . . ." While the work performed for two post-confirmation modifications to the plan can be deemed unanticipated, the work performed for the pre-confirmation modification to the plan cannot. Thus, the court does not find that this pre-confirmation work related to modifying the plan, charged at a total of $480.00, was substantial or unanticipated.

2. **Review of civil court summons and complaint on March 25, 2011** - The court will not authorize the use of bankruptcy estate funds to pay for litigation outside of bankruptcy. Thus, the court will not authorize payment of $90.00 for work related to the review of summons and complaint filed in civil court by Home Acceptance Corporation.

Applicant is allowed, and the Trustee is authorized to pay, $3,032.50 as compensation to this professional in this case:

Additional Fees	$3,602.50	
Costs and Expenses	$ 0.00	
Less Anticipated Work	$ 570.00	(calculated from $480.00 + $90.00)

25.	15-23037-B-13 MMN-1	EDGAR LOPEZ AND CLAUDIA SANCHEZ Stephen N. Murphy	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-6-15 [19]

PACIFIC ESTATES VS.

Tentative Ruling: The Motion for Relief From the Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 grant the Pacific Estates's motion for relief from stay.

Pacific Estates ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 28 Balboa Court, Fairfield, California (the "Property"), which Debtors lease on a month-to-month tenancy. Movant seeks to pursue its state law remedies including the filing of an unlawful detainer complaint. Movant has provided the Declaration of Juanita Jones ("Jones Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant asserts that there is 1 post-petition default, with a total of $335.00 in post-petition payments past due. Additionally, there are 3 pre-petition payments in default, with a total of $1,005.00 in pre-petition payments past due. The Jones Declaration states that Debtors have stopped paying rent in February 2015. Movant states that it served Debtors with a notice to quit on February 20, 2015 (Dkt. 5, Section 3.02 and 6.01 of the plan).

Opposition by Debtors

Debtors oppose the motion on the grounds that a motion for relief from stay does not apply to Movant as an unsecured creditor, Debtors have proposed to pay the Movant through the plan, no interested parties have objected to the plan, terminating the lease must be in accordance with California's Mobile Home Residency Law, Movants are retaliating against the Debtors, and that the Movant represented to the Debtors that the timing of payment would not be enforced strictly.

Debtors also assert that they attempted to remit payment for the past due rent and utilities prior to the expiration of the 3-day notice to quit the premises, but that the mobile home park manager refused to accept their payment. As evidence, Debtors provide a copy of their check (Dkt. 37, p. 3).

Discussion

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

Furthermore, this is a month-to-month tenancy that at some point would have to be assumed. Since there is no benefit to the Debtors or the estate from the assumption of a month-to-month lease that remains subject to termination even if assumed, *See In re Premier Automotive Services, Inc.*, 2006 WL 4711334 at *6 (Bankr. D. Md. 2006) and *In re Shaw*, 1994 WL 803495 (Bankr. N.D. Ala. 1994), the court will not allow the Debtors to sue the automatic stay to gain a greater leasehold interest than they presently have. Nor is it in the interests of judicial economy or a wise use of judicial resources to require the landlords to file repeated stay relief motions every time the Debtors fail

to timely pay rent or if the landlords desire to terminate the month-to-month tenancy for some other reason as they are entitled to.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to terminate the Debtors' month-to-month tenancy and/or commence unlawful detainer proceedings, both as permitted by and consistent with California law and/or any applicable agreement, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

No other or additional relief is granted by the court.

26.	14-27541-B-13 JPJ-1 **Thru #27**	JAMES TEETERS Peter L. Cianchetta	CONTINUED MOTION TO RECONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE 4-10-15 [61]

Tentative Ruling: The Motion of Convert has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 court's decision is to grant the motion to reconvert based on denial of confirmation in Item #27.

This Motion to Reconvert the Chapter 13 bankruptcy case of James Teeters ("Debtor") has been filed by Jan Johnson ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be reconverted based on the grounds that the Debtor has not filed a standard Chapter 13 Form Plan or Chapter 13 Statement of Current Monthly Income and Disposable Income Calculation within 14 days of the conversion to a Chapter 13 case pursuant to 11 U.S.C. § 521(a)(1) and Local Bankr. R. 3015-1(c)(1). Without the Chapter 13 plan and Form 22C-1, the feasibility of the case cannot be determined pursuant to 11 U.S.C. § 1325(a)(6) or whether the plan would be in compliance with 11 U.S.C. § 1325(a)(4).

Although the Debtor filed the requested documents on April 18, 2015, those documents do not resolve the Trustee's reasons for requesting re-conversion of the case to one under Chapter 7. This is apparent from the Trustee's objection to confirmation referenced in Item #27.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Based on the court's denial of confirmation in Item #27, cause exists to reconvert this case pursuant to 11 U.S.C. § 1307(c). The availability of non-exempt assets further supports the court's conclusion that conversion is in the best interest of the creditors.

27. 14-27541-B-13 JAMES TEETERS MOTION TO CONFIRM PLAN
PLC-5 Peter L. Cianchetta 4-18-15 [67]

Tentative Ruling: The Motion to Confirm the [First Amended] Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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, the Debtor has not complied with 11 U.S.C. § 521(a)(3) as the Debtor has not provided the Trustee with a BPO or appraisal for the lots listed on Schedule A of the petition filed April 18, 2015, and which the Trustee requested at the meeting of creditors on May 7, 2015.

Second, 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. According to Schedules A, B, and C of the petition, the total value of non-exempt property in the estate is $4,996,955.00. The total amount that will be paid to unsecured creditors is only $9,912.57. Further, there is potential equity in the property and undeveloped lots listed on Schedule A of the petition. Based on preliminary investigation, the total non-exempt equity from the developed property would be $124,742.72 and the total non-exempt equity form the undeveloped lots would be $34,365.68. These amounts in combination with the non-exempt property in the estate would be approximately $5,156,063.40.

Third, the Debtor has not provided the Trustee with a copy of his 2014 tax returns.

Fourth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

Fifth, the Debtor has understated his income and overstated his deductions which results in a net increase in his disposable income of $2,704.30. Based on the Debtor's proposed value of -$953.96 for his disposable income as listed on Line 45 of the Means Test, the Debtors correct monthly disposable income is or should be $1,750.34 and the Debtor must pay no less than $105,020.40 to general unsecured creditors. The plan will only pay approximately $1,223.77 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B).

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

28. 15-22442-B-13 JASWINDER/KULWINDER DULAI — OBJECTION TO CONFIRMATION OF PLAN BY EVERBANK
BF-5 Mark A. Wolff — 5-7-15 [16]

Tentative Ruling: The EverBank's Objection to Confirmation of 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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtors' plan does not propose to cure the pre-petition arrears owed to Everbank ("Creditor"). Therefore, the plan does not comply with 11 U.S.C. §§ 1322 (b)(5).

Second, the Debtors' plan does not classify Creditor's claim as a Class 1 claim. Since Debtors were delinquent on their obligation to Creditor at the time of filing the petition, Creditor's claim should be classified as a Class 1 claim.

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

29. 13-35745-B-13 PATRICIA KLINE
JPJ-3 James L. Keenan

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
5-6-15 [87]

CASE DISMISSED 5/22/15

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

30.	14-21846-B-13 JPJ-1	MARK/COLLEEN MARTIN Scott D. Hughes	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 20 4-8-15 [70]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

The court's decision is to sustain the objection to Proof of Claim Number 20 of Navient Solutions, Inc. and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 20 ("Claim"). The claim is asserted to be unsecured in the amount of $629.50. Objector asserts that the claim was filed after the deadline for filing claims pursuant to Fed. R. Bankr. P. 3002(c).

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).

Objector asserts that the claim was filed after the deadline for filing claims pursuant to Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is July 2, 2014. Creditor's proof of claim was filed on March 24, 2015. Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

31. 15-22546-B-13 JOANNA CLARK
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-14-15 [32]

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)(3) & (d)(1) and 9014-1(f)(1). 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 overrule the objection and conditionally deny the motion to dismiss.

Subsequent to the Trustee's objection, the Debtor has filed a First Amended Chapter 13 Plan on May 22, 2015 (Dkt. 40). Therefore, the issues raised in Trustee's objection to Debtor's plan filed April 7, 2015, are deemed moot.

32. 14-24049-B-13 KRISTIN AUSTIN MOTION TO SELL
MWB-8 Mark W. Briden 5-18-15 [116]

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

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

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Movant proposes to sell the property described as 1556 Saint Andrews Drive, Redding, California for the sum of $503,000.00 pursuant to the terms and conditions of the California Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit A-1 through A-10, Dkt. 119.

The proposed purchasers of the property are Ted Miller and Wendy Miller ("Buyers"). Proceeds from the sale will be used to pay off all liens of record which sole lien, according to the escrow company, is the mortgage in favor of Ocwen Bank. However, there may be delinquent Shasta County real estate taxes which must be paid at close of escrow.

The balance of the proceeds will be paid to Debtor in an amount not to exceed $175,000.00, which is the available California Homestead to Debtor, pursuant to CCP 704.730(a)(3). Proceeds in excess of the homestead exemption will be paid unto Jan Johnson, Chapter 13 Trustee, for distribution under the terms of the confirmed Chapter 13 plan.

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

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

33. 15-22255-B-13 JPJ-1 — MANPREET/GURPREET LAKHAT, C. Anthony Hughes — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 5-5-15 [23]

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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtors are delinquent to the Trustee in the amount of $746.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $746.00 will also be due. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, feasibility depends on the granting of a motion to value collateral for Ocwen Loan Servicing. Pursuant to Local Bankr. R. 3015-1(j), the Debtors must file, serve, and set for hearing a valuation motion and the hearing on valuation must be concluded before or in conjunction with the confirmation of the plan. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor or the Trustee a motion to value collateral.

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

34.	15-22956-B-13 JPJ-1	MARSHALL MASSON AND LISA ACKERMAN-MASSON Guy David Chism	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-14-15 [29]

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)(3) & (d)(1) and 9014-1(f)(1). 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 overrule the objection and conditionally deny the motion to dismiss.

Subsequent to the Trustee's objection, the Debtors have filed a First Amended Chapter 13 Plan on April 27, 2015 (Dkt. 22), and a Second Amended Chapter 13 Plan on May 5, 2015 (Dkt. 37). Therefore, the issues raised in Trustee's objection to Debtors' plan filed April 10, 2015, are deemed moot.

35. 15-21659-B-13 CHARLES HUGHES
Valerie B. Peo

OBJECTION TO CONFIRMATION OF PLAN BY THE GOLDEN ONE CREDIT UNION
5-5-15 [32]

Tentative Ruling: The Objection to Confirmation of 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)(3) & (d)(1) and 9014-1(f)(1). 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.

First, the Debtor's first amended Chapter 13 plan filed April 27, 2015, does not provide for the full allowed amount of Golden One Credit Union's claim pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii). Creditor filed its proof of claim of $23,094.60, secured by a second-position lien against the property, on April 9, 2015.

Second, Debtor may not avoid a junior lien where there is equity for the lien to attach. 11 U.S.C. § 1322(b)(2). Taking into account the Debtor's valuation of the 5502 Elk Hollow Court, Elk Grove, California property at $255,758.00 and CitiMortgage's first-position lien in the amount of $232,315.77 against the property, there is still equity in the real property for Creditor to attach.

Third, Debtor does not have sufficient income to fund a confirmable plan pursuant to 11 U.S.C. § 1325(a)(6). Debtor proposes to pay $2,600.00 per month for 60 months, leaving $56.88 in excess net income. This is insufficient to satisfy the $286.04 monthly contractual payments due under the note, and cannot support a cure of the $11,763.68 in pre-petition arrears.

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

36. 15-22361-B-13 LISA THOMPSON
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
4-30-15 [23]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Motion to Value secured claim 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 Capital One Auto Finance ("Creditor") at $6,000.00.

The motion filed by Lisa Thompson ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of 2010 Dodge Avenger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,858.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $6,000.00. *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.

37. 11-21564-B-13 SUZAN HAWBAKER — MOTION TO INCUR DEBT
SJS-2 Scott J. Sagaria — 5-20-15 [68]

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

The court's decision is to grant the motion to incur new debt.

The Debtor's motion seeks permission to take a loan against Debtor's retirement account in order to complete her Chapter 13 plan payments within the confirmed and maximum 60-month time period. The Debtor anticipates a loan of approximately $3,600.00 against her retirement account. Debtor's first amended Chapter 13 plan was confirmed on August 18, 2011, with a term of 60 months. Based upon the claims filed in the case, the projected amount of plan payments would exceed the maximum 60 month time frame by 9 months.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the debt against the retirement account, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

38. 15-22464-B-13 AMN-1 **Thru #39**

BRANT POWNER
Richard A. Hall

OBJECTION TO CONFIRMATION OF PLAN BY AMERICANWEST BANK
5-7-15 [17]

Tentative Ruling: Creditor Americanwest Bank's Objection to Confirmation of Debtor's 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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtor has filed a written reply to the objection.

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

First, the Debtor's expenses listed in Schedule J are unreasonably high. Although the Debtor has stated that the higher expenses of food, laundry, personal care, and clothing are due to his line of work and that the higher medical expenses are due to seeking counseling, the court nonetheless finds that Debtor's entertainment expenses are unreasonably high at $440.00.

Second, the court is not persuaded that the Debtor's employed, 51-year-old girlfriend is a dependent. Debtor asserts that his girlfriend qualifies as a dependent on the grounds that she "lives with him and therefore can be claimed as a dependent in bankruptcy" (Dkt. 25, p. 4) and that she "does not contribute to any of the household expenses" (Dkt. 25, p. 2). However, the Ninth Circuit does not determine dependency merely on whether the person lives with a debtor or contributes to household expenses.

Merely living with the Debtor does not establish dependency. The Ninth Circuit does not employ the "heads on beds" approach, which includes anyone living in a debtor's home at the time the case is filed, to determine household size. *In re Kops*, 2012 WL 11-41153-JDP, at *4 (Bankr. D. Idaho 2012). The Ninth Circuit has decided that this approach was too inclusive. *Id.*

Instead, the Ninth Circuit utilizes the "economic unit" approach. The Ninth Circuit has determined that the correct approach throughout the means test "is one that determines household members based on a person's *financial dependence upon*, and residence with, a debtor." *In re Kops*, 2012 WL 11-41153-JDP, at *4-5 (emphasis added).

The Debtor stated at the meeting of creditors that his adult girlfriend is employed (Naporlee Declaration, Dkt. 19, para. 7). Given that Debtor's girlfriend is employed and without any other evidence from the Debtor, the court finds it unlikely that she is financially dependent upon the Debtor. Whether Debtor's girlfriend contributes to household expenses is irrelevant for purposes of establishing dependency.

The inclusion of a dependent on Official Form 22C-2 decreases Debtor's disposable income and, thus, how much the Debtor can pay to his unsecured creditors. As a result, the plan is inequitable.

The plan filed March 27, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Although the creditor's objection relates to the Debtor's plan filed March 27, 2015, this issue is relevant to the first amended plan filed May 7, 2015, and remains of concern to the court.

39. 15-22464-B-13 JPJ-1

BRANT POWNER
Richard A. Hall

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-5-15 [14]

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)(3) & (d)(1) and 9014-1(f)(1). 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 overrule the objection and conditionally deny the motion to dismiss.

Subsequent to the Trustee's objection, the Debtor has filed a First Amended Chapter 13 Plan on May 7, 2015 (Dkt. 40). Therefore, the issue raised in Trustee's objection to Debtor's plan filed March 27, 2015, is deemed moot.

40. 15-22265-B-13 ANDREW MAC IVER
JPJ-1 Julius M. Engel
Thru #41

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-5-15 [20]

Tentative Ruling: Trustee's Objection to Confirmation of 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)(3) & (d)(1) and 9014-1(f)(1). 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 plan payment of $2,315.02 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 monthly amounts plus Trustee's fees is $2,385.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the Debtor is delinquent to the Trustee in the amount of $2,315.02, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,315.02 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The Debtor having filed on May 5, 2015, a Waiver of Exemptions (Dkt. 26) and an Amended Schedules (Dkt. 27) listing Debtor's prior bankruptcy case filed on July 25, 2013, Trustee's other grounds for objecting to the plan are deemed moot.

Nonetheless, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) for the first and second reasons stated above. 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.

41. 15-22265-B-13 ANDREW MAC IVER
JPJ-2 Julius M. Engel

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-5-15 [23]

Final Ruling: No appearance at the June 3, 2015, hearing is required.

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

from the parties' pleadings.

The court's decision is to overrule the Trustee's objection.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier was filed on May 5, 2015 (Dkt. 26). The Trustee's objection is overruled.

42. 12-30166-B-13 ALEXANDER MILLER — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 4-22-15 [28]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on April 22, 2015, 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 order confirming the Chapter 13 plan states that the correct amount of the post-petition arrearage is $4,566.16.

The modified plan underestimates the amount of the post-petition arrearage at $2,606.58. The trustee's records reflect that the correct amount of the post-petition arrearage is $4,566.16.

Provided that the order further modifies the plan to state the correct amount of post-petition arrearage, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

43.	11-28267-B-13 JPJ-2	CARALEE MANN C. Anthony Hughes	OBJECTION TO CLAIM OF PRA RECEIVABLES MANAGEMENT, LLC/GE MONEY BANK, CLAIM NUMBER 10 4-8-15 [46]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

The court's decision is to sustain the objection to Proof of Claim Number 10 of PRA Receivables Management LLC/GE Money Bank and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of PRA Receivables Management LLC/GE Money Bank ("Creditor"), Proof of Claim No. 10 ("Claim"). The claim is asserted to be unsecured in the amount of $629.50. Objector asserts that the claim appears to be a duplicate of the claim filed by GE Money Bank/PRA Receivables Management LLC in the amount of $629.50 as both proofs of claim recite the same account number.

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). 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).

Objector asserts that the claim appears to be a duplicate of the claim filed by GE Money Bank/PRA Receivables Management LLC in the amount of $629.50 as both proofs of claim recite the same account number. Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

44. 15-22670-B-13 DINAH SMITH
JPJ-1 Eric W. Vandermey
Thru #45

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-5-15 [15]

WITHDRAWN BY M. P.

Final Ruling: No appearance at the June 3, 2015, hearing is required.

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

45. 15-22670-B-13 DINAH SMITH
JPJ-2 Eric W. Vandermey

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-5-15 [18]

Final Ruling: No appearance at the June 3, 2015, hearing is required.

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

The court's decision is to overrule the Trustee's objection.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier was filed on May 8, 2015 (Dkt. 22). The Trustee's objection is overruled.

46.	15-22673-B-13 JPJ-1	ROSALIND BOLDEN Julius M. Engel	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 5-14-15 [19]

Final Ruling: No appearance at the June 3, 2015, hearing is required.

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

47. 14-29375-B-13 JAMES FETTY MOTION TO MODIFY PLAN
RJ-5 Richard L. Jare 4-24-15 [64]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on April 24, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

48. 13-25579-B-13 ROBERT SLATON — MOTION TO MODIFY PLAN
WW-2 Mark A. Wolff — 4-22-15 [82]

Tentative Ruling: The Motion to Confirm First 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 permit the requested modification and confirm the modified plan, provided that the order properly account for all payments made by the Debtor to date by stating the following: The Debtor has paid a total of $11,326.00 to the Trustee through April 25, 2015. Commencing May 25, 2015, monthly plan payments shall be $500.00 for the remainder of the plan.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

49. 14-20882-B-13 CHRISTOPHER SCOTT
CA-1 Michael David Croddy

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY & ASSOCIATES FOR MICHAEL CRODDY, DEBTOR'S ATTORNEY
5-13-15 [27]

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

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

Michael Croddy ("Applicant"), the attorney to Christopher Scott ("Client"), makes his first interim request for the allowance of fees in the amount of $4,762.50 and expenses in the amount of $430.65. After application of the $1,500.00 retainer and the $306.00 paid to counsel for the filing fee, a total of $3,387.15 in additional compensation is sought by this motion. The Client has opted out of the Guidelines (Dkt. 1, p. 39). The period for which the fees are requested is for October 5, 2013, through June 3, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 30).

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.

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

Additional Fees	$3,387.15
Costs and Expenses	$0.00

50. 10-50783-B-13 DANIEL/KIMBERLI BARTLETT MOTION TO REFINANCE
SDH-1 Scott D. Hughes 4-28-15 [31]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

The Motion to Approve Refinance of Mortgage has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the refinance of mortgage.

The motion filed by Daniel Bartlett and Kimberli Bartlett ("Debtors") seeks court approval to incur post-petition credit. Mountain West Financial ("Creditor") has agreed to a new loan that will pay off the first and second mortgages on the residence and replace it with a single new mortgage. The offer will be secured by a new first position deed of trust on the Debtors' residence located at 2731 Caldwell Court, Sacramento, California. The monthly payments for the Debtors will decrease from $1,833.00 per month to $794.92 per month.

The motion is supported by the Declaration of Daniel Bartlett. The Declaration affirms Debtors' desire to obtain the post-petition financing, and Debtors' receipt of a $63,607.16 inheritance provides evidence of Debtors' ability to pay this claim on the modified terms.

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

51. 15-23684-B-13 ALFRED/CAROLYN SHULTS MOTION TO EXTEND AUTOMATIC STAY
CAH-1 Michael David Croddy 5-5-15 [8]

Tentative Ruling: The Motion to Extend Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. 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.

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

Alfred Shults and Carolyn Shults ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' third bankruptcy petition. The first case was filed under Chapter 13 on December 4, 2013 (No. 13-35366), and was dismissed on September 2, 2014, after Debtors failed to make plan payments (Dkt. 61). The second case was filed under Chapter 13 on September 18, 2014, but later converted to Chapter 7, and Debtors received a discharge on March 17, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtors failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors state that the prior Chapter 13 case was filed to provide the Debtors with an opportunity to catch up on arrears owed on their home and to continue to make the monthly payments. However, the Debtors experienced a downturn in their business and were unable to make plan payments. Their only income was from Social Security and business income. Debtors assert that they are now able to make and complete plan payments because their income has increased by renting out their pastures at $1,100.00 per month and receipt of Social Security, business income, rental income from a tenant, and income from selling farm produce.

Opposition by Creditors Harry Miller and Leah Miller

Harry Miller and Leah Miller (collectively, "the Millers") oppose the motion on the ground that the Debtors' present bankruptcy case was not filed in good faith. According to the Millers, the Debtors have grossly underestimated the amount of arrears due to the Millers, as Class 1 creditors, and have failed to provide for future payments as they come due. Additionally, the Millers assert that the Debtors have failed to prove a substantial change in their financial or personal affairs such that the bankruptcy will succeed.

The Millers assert a list of reasons why the automatic stay should not be extended: that the Debtors have failed to repair the mobile home located at 3501 Freshwater Lane, El Dorado, California ("Property") that was destroyed by a cut tree and thus preventing the Millers from maintaining insurance on the mobile home, that the Debtors have not obtained an occupancy permit or acquired a septic tank despite renting out a travel trailer on the property, that the Debtors have not paid the Millers since August 2012, that the Debtors are delinquent approximately $7,446.00 to El Dorado County, and that Debtors have misrepresented their income.

Opposition by Creditors Rick Rogers and Lana Rogers

Rick Rogers and Lana Rogers (collectively, "the Rogers") assert nearly identical arguments as the Millers, the main difference being that the Millers and the Rogers agreed to sell to the Debtors the Property at different amounts and to receive different monthly payments under the terms of two separate promissory notes (Dkt. 20, p. 6 and Dkt. 24, p. 4).

The court finds that the Debtors have not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Debtors have provided no supporting invoices or documentation of income from renting the pasture, rental income from a tenant, income from selling farm produce, an increase in business income, or copies of social security checks.

Therefore, the motion is not granted and the automatic stay is not extended for all purposes and parties.

52. 11-25286-B-13 TANYA WINSEN
JPJ-2 Mark Shmorgon
Thru #54

CONTINUED MOTION TO DISMISS CASE
4-14-15 [66]

Tentative Ruling: Because originally 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.

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

Subsequent to the Trustee's motion to dismiss case, the Debtor filed a First Modified Chapter 13 Plan on April 20, 2015 (Dkt. 81). Therefore, the issues raised in the Trustee's motion with regard to the Debtor's plan confirmed October 10, 2011, are deemed moot.

53. 11-25286-B-13 TANYA WINSEN
MS-1 Mark Shmorgon

MOTION TO MODIFY PLAN
4-20-15 [77]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 the order properly account for all payments made by the Debtor by stating the following: The Debtor has paid a total of $19,200.00 into her plan as of Month 48, or March 2015.

To address the Trustee's opposition with respect to the approval of attorney's fees in connection with confirmation of the modified plan, Debtor's counsel has filed a motion for compensation (see Item #54 below).

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

54. 11-25286-B-13 TANYA WINSEN
MS-2 Mark Shmorgon

MOTION FOR COMPENSATION FOR MARK SHMORGON, DEBTOR'S ATTORNEY
4-28-15 [89]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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 court's decision is to grant the first application for compensation.

Mark Shmorgon ("Applicant"), the attorney to Tanya Winsen ("Debtor"), makes his first request for the allowance of fees in the amount of $1,250.00 and expenses in the amount of $0.00. The period for which the fees are requested is for April 17, 2015, through April 28, 2015. The court granted Debtor's application for substitution of attorney on April 20, 2015 (Dkt. 71). Prior to this, Debtors were pro se.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 92, Exh. A).

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 not beneficial to the Client and bankruptcy estate and reasonable.

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

Fees	$1,250.00
Costs and Expenses	$0.00

55. 14-27787-B-13 RUBEN/LINDA RODRIGUEZ
CA-1 Michael David Croddy

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY & ASSOCIATES FOR MICHAEL D. CRODDY, DEBTORS' ATTORNEY
5-8-15 [34]

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

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

Michael Croddy ("Applicant"), the attorney to Ruben Rodriguez and Linda Rodriguez ("Clients"), makes his first interim request for the allowance of fees in the amount of $9,600.00 and expenses in the amount of $482.90. After application of the $5,000.00 retainer and the $310.00 paid to counsel for the filing fee, a total of $4,772.90 in additional compensation is sought by this motion. The Clients have opted out of the Guidelines (Dkt. 1, p. 11). The period for which the fees are requested is for July 6, 2014, through April 22, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 37).

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 Clients and bankruptcy estate and reasonable.

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

Additional Fees	$4,772.90
Costs and Expenses	$0.00

56. 14-23388-B-13 DEBRA HILTON
CA-1 Michael David Croddy

MOTION FOR COMPENSATION FOR MICHAEL D. CRODDY, DEBTOR'S ATTORNEY
5-13-15 [29]

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

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

Michael Croddy ("Applicant"), the attorney to Debra Hilton ("Client"), makes his first interim request for the allowance of fees in the amount of $4,800.00 and expenses in the amount of $411.19. After application of the $1,000.00 retainer and the $281.00 paid to counsel for the filing fee, a total of $3,930.19 in additional compensation is sought by this motion. The Client has opted out of the Guidelines (Dkt. 1, p. 8). The period for which the fees are requested is for August 30, 2013, through June 3, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 32).

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.

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

Additional Fees	$3,930.19
Costs and Expenses	$0.00

57. 14-28492-B-13 MICHAEL/RENAE CHANDLER — MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY & ASSOCIATES FOR MICHAEL D. CRODDY, DEBTORS' ATTORNEY 5-9-15 [41]
CA-1 Michael David Croddy

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

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

Michael Croddy ("Applicant"), the attorney to Michael Chandler and Renae Chandler ("Clients"), makes his first interim request for the allowance of fees in the amount of $4,500.00 and expenses in the amount of $466.68. After application of the $0.00 retainer and the $310.00 paid to counsel for the filing fee, a total of $4,656.68 in additional compensation is sought by this motion. The Clients have opted out of the Guidelines (Dkt. 1, p. 11). The period for which the fees are requested is for January 21, 2014, through May 9, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 43).

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 Clients and bankruptcy estate and reasonable.

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

Additional Fees	$4,656.68
Costs and Expenses	$0.00

58. 15-20896-B-13 MICHAEL/SUSAN FARMER — MOTION TO CONFIRM PLAN
WW-2 Mark A. Wolff — 4-20-15 [27]

Final Ruling: No appearance at the June 3, 2015 hearing is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 20, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

59. 14-23298-B-13 NHAN THAI
CA-1 Michael David Croddy

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY AND ASSOCIATES FOR MICHAEL D. CRODDY, DEBTOR'S ATTORNEY
5-13-15 [22]

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

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

Michael Croddy ("Applicant"), the attorney to Nhan Thai ("Client"), makes his first interim request for the allowance of fees in the amount of $5,475.00 and expenses in the amount of $380.72. After application of the $2,000.00 retainer and the $281.00 paid to counsel for the filing fee, a total of $3,574.72 in additional compensation is sought by this motion. The Client has opted out of the Guidelines (Dkt. 1, p. 8). The period for which the fees are requested is for February 14, 2014, through June 3, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 25).

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.

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

Additional Fees	$3,574.72
Costs and Expenses	$0.00