UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 13, 2017 at 1:00 p.m.

1.	17-20407-B-13	FORREST GARDENS	MOTION TO CONFIRM PLAN
	MRL-4	Mikalah R. Liviakis	4-17-17 [58]

Final Ruling: No appearance at the June 13, 2017 hearing is required.

The Motion to Confirm Debtor's 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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 15, 2017 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

2. 17-22211-B-13 SHANNON HARTMAN
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-24-17 [19]

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

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

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

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

Third, the plan will take approximately 149 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).

Fourth, the Trustee is unable to determine if the plan payments equal the aggregate of the Trustee's fee payable on the Class 2 secured claim as the right side of the plan appears to have been cut off when it was filed with the court.

The plan filed April 10, 2014, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

3. 17-22511-B-13 JOHN DUNNE
JPJ-1 Jennifer G. Lee

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-24-17 [20]

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

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

First, the plan will take approximately 70 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).

Second, feasibility of the plan depends on the granting of a motion to value collateral of Wells Fargo Dealer Services for a vehicle. The hearing on the motion (dkt. 16) has been continued to July 17, 2017 to allow the creditor to obtain an appraisal of the vehicle.

Third, the plan payment in the amount of $3,025.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed April 15, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

4.	14-30114-B-13 ALF-2 **Thru #5**	ANDRES/GLORIA ULLOA Ashley R. Amerio	MOTION TO APPROVE LOAN MODIFICATION 5-9-17 [43]

Final Ruling: No appearance at the June 13, 2017, hearing is required.

The Motion to Approve Loan Modification 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 loan modification requested.

Debtors seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $930 a month to $778.23 a month which includes property taxes and homeowner's insurance.

The motion is supported by the Joint Declaration of Andres Espinoza Ulloa and Gloria Reyes Ulloa. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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.

5. 14-30114-B-13 ANDRES/GLORIA ULLOA MOTION TO MODIFY PLAN
ALF-3 Ashley R. Amerio 5-9-17 [50]

Final Ruling: No appearance at the July 13, 2017 hearing is required.

The Motion to Confirm the Modified 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 9, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

6. 17-21520-B-13 MARK ENOS MOTION TO CONFIRM PLAN
PLC-1 Peter L. Cianchetta 5-8-17 [19]
Thru #7

Tentative Ruling: The Motion to Confirm 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 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. Debtor's plan offers 0% to unsecured creditors, yet the estate has enough assets to pay unsecured debts in full.

Second, feasibility of the plan depends on the granting of a motion to value collateral of Acura Financial Services for a vehicle. The Debtor has filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j), which the court has decided to grant (see matter 7 below). Dkt. 24.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $924.00, which represents approximately 1 partial plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

7.	17-21520-B-13 PLC-2	MARK ENOS Peter L. Cianchetta	MOTION TO VALUE COLLATERAL OF ACURA FINANCIAL SERVICES 5-8-17 [24]

Final Ruling: No appearance at the June 13, 2017 hearing is required.

The Motion to Value Secured Portion of Claim of Acura Financial Services 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 Acura Financial Services at $9,425.00.

Debtor's motion to value the secured claim of Acura Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Acura TL ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,425.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 6, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,226.67. 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 $9,425.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

8. 15-29322-B-13 JAMES/TRACEE LEWIS
ALF-13 Ashley R. Amerio

MOTION TO SUBSTITUTE TRACEE LOUISE LEWIS AS THE REPRESENTATIVE FOR JAMES GEORGE LEWIS, JR.
5-11-17 [150]

Final Ruling: No appearance at the June 13, 2017 hearing is required.

The Motion for Substitution and Suggestion of Death 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 substitute the surviving Debtor, who is appointed representative of the estate, to continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Tracee Louise Lewis gives notice of death of her husband and Co-Debtor James George Lewis and requests the court substitute Tracee Louise Lewis in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of

death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The **motion for substitution together with notice of the hearing is to be served on the parties in**

> **accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. Debtor contends that she can afford the plan payments due to decrease in household expenditures as a result of the death of her spouse. The Supplemental Schedule J reflects a decrease in mortgage payment, food, medical expenses, transportation, vehicle insurance, life insurance, health and insurance, and CalPers tax deductions. Ex. C, Dkt. 153. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

9. 17-22427-B-13 TOLLIFERRO SMITH
JPJ-1 Hayk Grigoryan

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-24-17 [36]

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

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

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

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

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

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

Fifth, Debtor failed to utilize the mandatory Official Bankruptcy Form for the Statement of Financial Affairs.

Sixth, the plan misclassifies a Wells Fargo claim in Class 4 notwithstanding Debtor's delinquency on the loan. The pre-written language of the form plan defines class 4 claims as secured claims that are not in default.

Seventh, the plan does not specify an arrearage dividend on the Class 1 Wells Fargo claim.

Eighth, it does not appear that Debtor is paying all of his disposable income into the plan based on improper expenses listed on Schedule J for the first and second deed of trust and the additional room rental income.

Ninth, the plan fails to provide for the priority debt of the IRS (Claim 4-1) in violation of 11 U.S.C. § 1322(a)(2).

Tenth, it appears that Debtor's current monthly income exceeds the median family income for his household size. Debtor has failed to file a Form 122C-2, thus the Trustee is unable to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Eleventh, the debtor has failed to list a filed bankruptcy on his petition as requested by the Trustee at the May 18, 2017 § 341 meeting of creditors.

The plan filed April 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

10.	17-22359-B-13 JPJ-1	MARTY SAVSTROM Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 5-24-17 [20]

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

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

First, based on the proof of claim filed by the IRS (Claim 1-1), the plan will take approximately 97 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 plan filed April 21, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

11. 17-22076-B-13 DAVID/YOLANDA JONES — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Chad M. Johnson — 5-24-17 [20]

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

The court's decision is to overrule the objection and confirm the plan provided the Debtors have resolved the Trustee's concerns and there are no other issues resulting from the Debtors' disclosure of additional income.

First, the Trustee objects because the Debtors have not provided the Trustee with a copy of an income tax return for the 2016 tax year as requested by the Trustee. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the Trustee also objects because of uncertainty as to whether the Debtors can make the plan payments. Based on Debtors' testimony at the May 18, 2017 § 341 meeting of creditors, Mrs. Jones gross monthly income from her new job ($814.60 to $1,018.26) is substantially less than the amount currently listed on Line #2 of Schedule I ($2,094.36).

In response to the Trustee's concerns, Debtors contend that (1) a copy of Debtors' 2016 income tax return was sent to the Trustee on May 26, 2017; and (2) the amount currently listed on Line #2 of Schedule I ($2,094.36) is retirement (PERS) income that joint debtor will continue to receive and the income from Mrs. Jones new job will be in addition to the income listed on Schedule I.

To the extent that the Debtors have adequately resolved the Trustee's objections to confirmation, the court is prepared to overrule the objections and confirm the Debtors' plan.

To the extent it is determined at the hearing that the plan complies with 11 U.S.C. §§ 1322 and 1325(a), the objection will be overruled and the plan filed April 13, 2017, will be confirmed.

12. 12-36191-B-13 DEANNA KRENECKI
NLG-1 Mikalah R. Liviakis

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-17 [45]

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 motion for relief from stay.

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7215 Eagle Road, Fair Oaks, California (the "Property"). Movant has provided the Declaration of Lisa Lubbess to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Lubbess Declaration states that there are post-petition defaults for the months of February 1, 2017, through March 1, 2017. Movant has submitted a post-petition payment history setting forth Debtor's post-petition payments. Dkt. 48, Exh. 5. The post-petition payment history reflects that although payments were made by the Debtor on February 1, 2017, and March 2, 2017, those payments were applied to months November 2016 through January 2017.

The Debtor has filed an opposition stating that she made two payments to Movant for the months of February 2017 and March 2017. Debtor asserts that during the last six months, she has paid Movant approximately $14,267.00.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $355,601.85 (including $298,307.85 secured by Movant's first deed of trust) as supported by Movant's motion and Schedule D filed by the Debtor. The value of the Property is determined to be $197,000.00 as stated in Schedules A and D filed by Debtor.

The court also notes that the Debtor's plan confirmed on or about November 7, 2012, classifies Movant's claim as a Class 4 secured claim to be paid directly by the Debtor.

Discussion

Since Movant's secured claim is classified as a Class 4 secured claim in the Debtor's confirmed chapter 13 plan, confirmation modified all bankruptcy stays to allow Movant to exercise its rights against its collateral and any nondebtor. Therefore, as to the collateral and Movant's right to exercise its rights under applicable nonbankruptcy law, including its right to foreclose based on the Debtor's default, there is no stay in effect. *See* 11 U.S.C. § 362(j).

Further, 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). Although the Debtor did make payments in February 2017 and March 2017, the evidence presented shows that those payments were applied to months November 2016 through January 2017. Thus, the Debtor remains in default for months February 2017 and March 2017. And in the absence of equity in the property, Movant is not adequately protected. Therefore, even if the automatic stay was not already terminated by and upon confirmation, Movant has stated cause under 11 U.S.C. § 362(d)(1).

The court shall issue an order confirming that all bankruptcy stays are terminated to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and to otherwise exercise their state law and contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Attorneys' Fees Requested

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

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

13. 13-27992-B-13 SUSAN MAGLIANO-BASSOFF MOTION TO MODIFY PLAN
JPJ-1 Timothy J. Walsh 4-10-17 [75]

Tentative Ruling: Trustee's Motion for Post-Confirmation Modification of the 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 deny the motion as moot and not permit the requested modification and not confirm the modified plan.

The Trustee proposes a modified plan because the debtor's monthly expenditures have decreased by approximately $1,631.23 after the court granted the Debtor's motion to approve a loan modification with Wells Fargo Bank in January of 2017. Dkt. 74. Based upon the significant decrease in monthly expenditures due to the loan modification, the Trustee asserts the plan payment should be increased to $1,831.23 per month beginning June 25, 2017 and continuing through month 60. The increase in plan payment will increase the dividend paid on general unsecured claims from 4% to 25%.

Debtor opposes the motion and contends that she is unable to make the proposed payments and she has lost spousal support in the amount of $5,800 per month. Debtor has filed as alternative plan to be heard on June 20, 2017. Dkt. 85.

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

Subsequent to the filing of the Trustee's motion, the Debtor filed an amended plan on May 8, 2017. The confirmation hearing for the amended plan is scheduled for June 20, 2017. The earlier plan filed April 10, 217, is not confirmed.

14. 17-20993-B-13 MRL-2 **Thru #15**

EVAN/CELESTE NEISER
Mikalah R. Liviakis

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THERESE REESE
5-23-17 [49]

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

The court's decision is to grant the motion and approve the settlement.

Evan and Celeste Neiser("Movants"), the Chapter 13 Debtors, request that the court approve a compromise and settle competing claims and defenses with Therese Reese ("Settlor"). The claims and disputes to be resolved by the proposed settlement stem from a state court judgement in the amount of $52,494.21 in favor of Settlor and against Movants. Movants successfully avoided Settlor's judicial lien against Movants' assets. (Dkt. 23). Settlor filed an exhaustive objection to confirmation of Movants' plan. (Dkt. 28)

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dkt. 51):

> A. Movants shall pay Settlor $10,000 (funds provided by non-debtor Melissa Cookson) in satisfaction fo the state court judgment.
>
> B. The Debtors, the estate, and Mrs. Reese will mutually release all claims against one another.
>
> C. Each party to bear their own attorneys' fees.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

> 1. The probability of success in the litigation;
>
> 2. Any difficulties expected in collection;
>
> 3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success
Mrs. Reese has alleged substantial damages to her real property, including the reckless destruction of property. Determining the exact cause of damages and intent of the parties' years later could prove difficult in terms of meeting an evidentiary standard. In addition, she does have the Amended Judgment for $52,000, against the Debtors, which has been liquidated and adjudicated. Ongoing litigation with Mrs. Reese could result in significant harm to the bankruptcy estate due to the high cost of litigation. The litigation would include litigation over the confirmability of the current Chapter 13 plan.

Difficulties in Collection
The Debtors' contend their current plan designates all disposable income to the Chapter 13 plan to pay secured and unsecured creditors. Mrs. Reese disputes this contention and has objected to plan confirmation.

Expense, Inconvenience and Delay of Continued Litigation
It is likely that establishing the facts necessary to go forward with litigation would require both parties to produce large amounts of documents. Both parties would incur large attorney's fees to analyze and organize these documents for trial. Requiring the parties to continue to litigate both causes of action would likely result in unnecessary delay and a consumption of resources.

Paramount Interest of Creditors
In the event that the case goes forward the other creditors of the estate will be at risk of having their payment reduced, and limit it from increasing in the future if Debtor's income were to increase. That is largely because Debtors would be forced to incur large amounts of administrative priority attorney fees to defend the bankruptcy litigation.

Moreover, this settlement agreement should not harm other creditors. The agreement does not require the estate to make monthly installment payments to the Reese that would arguably decrease the available disposable income of the plan budget. Rather, this settlement agreement merely requires the payment to Reese from property that is not part of the bankruptcy estate.

Weighing the *A & C Properties* and *Woodson* factors, the compromise is in the best interest of the creditors and the Estate. The motion is granted.

15.	17-20993-B-13 PA-2	EVAN/CELESTE NEISER Mikalah R. Liviakis	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THERESE REESE 4-13-17 [28]

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

The court's decision is to overrule the objection and confirm the plan.

Movant, Therese Reese, has entered a settlement agreement with Chapter 13 Debtors Evan and Celeste Neiser which releases all claims and litigation against the Debtors, including litigation over the confirmability of their chapter 13 plan. See Dkts 49 & 51. The court has approved the settlement (see matter 14 above). Accordingly, the objection to confirmation is overruled as moot.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed February 17, 2017 is confirmed.

16. 16-24195-B-13 JESSICA NADOLSKI MOTION TO CONFIRM PLAN O.S.T.
DE-5 Diane Eggler 5-25-17 [82]

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

The court's decision is to confirm the third amended plan.

First, the plan was not filed as a separate document as required by LBR 3015-1(d)(1).

Second, the Trustee is unable to fully assess the feasibility of the plan as the terms stated in the Additional Provisions are unclear. Specifically, the provisions state that the monthly payment of $981.93 per month will continue for "3 months = September through January". The period of September 2016 through January 207 is five months.

Third, the plan proposes 0% interest to One Main Financial in Class 2A. This does not comply with 'prime plus one' interest rate required by the Supreme Court in Till v. SCS Credit Corporation, 541 U.S. 465 (2004). The national prime rate is 3.75%; thus, the appropriate interest rate is no less than 4.75%.

To resolve the Trustees aforementioned concerns, the Debtor filed the plan as a separate document; (2) agrees that the $981.93 payment is for five months; and (3) agrees to provide a 5.0% interest rate to creditor One Main Financial.

The docket reflects that when Debtor filed the plan as a separate document (see dkt. 86), revisions were made to the plan to remediate the problems identified by the Trustee.

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