

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 8, 2015 at 10:00 a.m.

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1. [15-21906](#)-B-13 DARNELLA JONES MOTION TO CONVERT CASE FROM
JPJ-2 Pro Se CHAPTER 13 TO CHAPTER 7 (FILING
FEE NOT PAID OR NOT REQUIRED),
MOTION TO DISMISS CASE
6-17-15 [[38](#)]

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

The court's decision is to convert this Chapter 13 case to a Chapter 7 proceeding.

This Motion to convert or dismiss the Chapter 13 bankruptcy case of Darnella Jones ("Debtor") has been filed by Jan Johnson ("Movant"), the Chapter 13 Trustee. Movant currently has no funds to pay the conversion fee. Movant asserts that the case should be converted based on the following grounds.

First, the Debtor has not prosecuted this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of Chapter 13 plan was heard and sustained on May 13, 2015. To date, the Debtor has not taken further action to confirm a plan in the case.

Second, the Debtor is delinquent to the Trustee in the amount of \$2,000.00, which represents approximately 2 plan payments. By the time this motion is heard, an additional plan payment in the amount of \$1,000.00 will also be due. The Debtor has not made any plan payments since this petition was filed on March 11, 2015.

Third, according to Schedules A, B, and C of the petition filed March 11, 2015, the total value of the nonexempt property in the estate is \$122,740.00 after an estimated 5.0% cost-of-sale for items listed on Schedule B. Rather than dismissing the case, conversion to a Chapter 7 proceeding is in the best interest of the creditors and the estate pursuant to 11 U.S.C. § 1307(c).

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

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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 not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *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).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) and, because there is nonexempt property, conversion rather than dismissal is in the best interest of the creditors. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

2. [13-31710](#)-B-13 DONALD/CLEMIE HOPKINS
SJS-1 Scott J. Sagaria

MOTION FOR AN ORDER TO SHOW
CAUSE FOR VIOLATIONS OF THE
CONFIRMATION ORDER AND
AUTOMATIC STAY
5-22-15 [[23](#)]

Final Ruling: No appearance at the July 8, 2015 hearing is required.

The Debtors' Motion for an Order to Show Cause for Violation of the Confirmation Order and Automatic Stay 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 grant the motion for an order to show cause.

Debtors seek an order to show cause due to the failure of EnerBank ("Creditor") to reflect on Co-Debtor Donald Hopkins' credit report the receipt of approximately \$365.48 in payment by the Chapter 13 Trustee. The credit report indicates that Creditor still reports a balance owed in the amount of \$2,442.00 and a past due amount of \$175.00 (Dkt. 26, Exh. G).

The motion is supported by the Declaration of Joe Angelo. The Declaration affirms that the payments received by Creditor from the Chapter 13 Trustee are not reflected on Co-Debtor's credit report.

The court shall issue an order to show cause why Creditor should not be sanctioned for violating the confirmation order and the automatic stay by continuing to report inaccurate and misleading credit information about the Debtors. Specifically, Creditor continues to report a balance owed in the amount of \$2,442.00 with \$175.00 being reported as past due after receiving \$365.40 from the Chapter 13 Trustee under the terms of the Debtors' confirmed plan. A separate order to show cause shall issue.

The court also notes that on June 30, 2015, Creditor filed a Withdrawal of Proof of Claim No. 19 in which it purports to withdraw its unsecured claim in the amount of \$2,442.00 that was filed on December 30, 2013. The court does not permit Creditor to unilaterally withdraw this proof of claim. Creditor is deemed to have accepted the Debtors' confirmed plan by not objecting to it. Creditor has also accepted distributions on its proof of claim from the Trustee under the terms of the Debtors' confirmed plan. Creditor may, therefore, withdraw its proof of claim only upon order of this court after a hearing on notice to the Trustee and creditors. Fed. R. Bankr. P. 3006. Creditor's withdrawal shall be stricken.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [15-23914](#)-B-13 MICHAEL/SUSANNA ADEMA
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON, TRUSTEE
6-17-15 [[16](#)]

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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan filed May 14, 2015, does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form B22C-2) includes an impermissible expense in the amount of \$800.00 for voluntary retirement contributions. This is disposable income under 11 U.S.C. § 547(b)(7) and, therefore, such income must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In Re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012). This court adopts *Parks* and will follow it with respect to the Debtors' post-petition retirement contributions in this case. The Debtors must pay no less than \$87,288.00 to the general unsecured creditors. The plan pays only \$38,312.26 to the general unsecured creditors.

Second, the Debtors have not provided the Trustee with a copy of their 2014 tax returns after testifying at the 341 Meeting of Creditors that they had filed their 2014 tax returns. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion for Order Confirming 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 not permit the requested modification and not confirm the modified plan.

First, the plan payment in the amount of \$900.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fee is \$3,299.00. The plan filed May 26, 2015, does not comply with Section 4.02 of the mandatory form plan.

Second, the plan does not properly account for all payments the Debtor has paid to the Trustee to date. The Debtor has paid a total of \$24,300.00 to the Trustee through May 2015. Commencing June 25, 2015, monthly plan payments shall be \$900.00 for the remainder of the plan.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

5. [15-21317](#)-B-13 EDUARDO MORALES
MB-1 Michael Benavides

MOTION TO CONFIRM PLAN
5-27-15 [[44](#)]

Tentative Ruling: The Motion to Confirm Debtors' (sic) Amended Chapter 13 Plan Filed on May 27, 2015, 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.

The Debtor has not amended Schedules I and J to reflect the raise of \$5.00/hour in his current income. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 for an order confirming no automatic stay went into effect upon the filing of the present case.

Ally Financial Serviced by Ally Servicing LLC ("Movant") seeks an order confirming that the automatic stay is not in effect with respect to a 2011 Chevrolet Silverado (VIN ending in -392477) ("Vehicle"). The Movant seeks the confirmation on the grounds that the Debtors had two prior bankruptcy cases that were dismissed, pending within the one year prior to the filing of this case. This is the Debtors' third bankruptcy filing since April 9, 2014.

On April 9, 2014, the Debtors filed a Chapter 13 case (case no. 14-23635). It was dismissed on October 21, 2014. On December 8, 2014, the Debtors filed a Chapter 13 case (case no. 14-31902). It was dismissed on April 21, 2015. The Debtors filed the instant case on May 18, 2015.

11 U.S.C. § 362(c)(4)(A) provides that (I) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the court confirms that the automatic stay of 11 U.S.C. § 362(a) did not go into effect upon the filing of the instant case on May 18, 2015. See 11 U.S.C. §§ 362(c)(4)(A)(ii) and 362(j). Movant's alternative request for an order that no stay is in effect is denied as an improper request for a "comfort order" which is tantamount to a request for an advisory opinion.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion to Confirm Second Modified Plan Dated May 29, 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 May 29, 2015, will take approximately 107 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, the Debtor does not appear to be putting his best efforts to repay his creditors. According to Debtor's Amended Schedules I and J filed on May 29, 2015, the Debtor's projected average gross monthly income is \$5,050.30 and his tax, medicare, and social security deductions are \$1,431.82/month which is approximately 28.0% of the Debtor's gross monthly income.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

8. [14-27541](#)-B-13 JAMES TEETERS
JPJ-2 Peter L. Cianchetta

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-23-15 [[94](#)]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

The Debtor has claimed an interest in real and/or personal property as exempt under both California Code of Civil Procedure §§ 703 and 704. Pursuant to California Code of Civil Procedure §§ 703.140(a)(1) and (a)(3), a debtor may claim certain property exempt under either § 703 or § 704 but not both.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

Final Ruling: No appearance at the June 8, 2015 hearing is required.

The Motion to Confirm First Amended Plan Filed on May 22, 2015, 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 May 22, 2015 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [13-30052](#)-B-13 KEVIN BRACY
BLG-5 Pro Se

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP FOR PAULDEEP BAINS,
DEBTOR'S ATTORNEY(S)
6-8-15 [[100](#)]

Final Ruling: No appearance at the July 8, 2015 hearing is required.

Pauldeep Bains' First and Final Motion for Compensation in the Amount of \$1,930.00 and Reimbursement of Cost in the Amount of \$37.06 for an Aggregate of \$1,967.06 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 deny without prejudice the motion for compensation.

As part of confirmation of the Debtor's Chapter 13 plan, the Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). Although the Applicant states that the initial agreed upon fee was \$4,000.00 based on the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorney" filed July 31, 2013 (Dkt. 7), the court actually authorized payment of \$3,500.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation (Order Confirming Plan, Dkt. 58). The debtor's former attorney now seeks additional compensation in the amount of \$1,930.00 in fees and \$37.06 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 103).

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).

Although the Applicant here does cite *In re Pedersen*, the Applicant does not address why the post-confirmation work performed was substantial and unanticipated so as to receive additional compensation. It appears that the Applicant asserts that its preparation and filing of a "Motion to Modify BLG-3" to surrender a BMW and reflect changes in income and expenses constituted substantial and unanticipated work. However, the Guidelines state the "no-look" fee is sufficient to fairly compensate counsel for most post-confirmation services including modifying the plan.

Additionally, the court will not award 1.8 hours, or \$153.00, attributed to "administrative staff," which is distinct from paralegal services and is more in the nature of secretarial and office staff services.

Accordingly, the motion for compensation is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. [14-29255](#)-B-13 JUDITH RACE-HOEPKER
JPJ-1 W. Scott de Bie

OBJECTION TO CLAIM OF JEFFERSON
CAPITAL SYSTEMS, LLC, CLAIM
NUMBER 4
5-11-15 [[20](#)]

Tentative Ruling: The Trustee's Objection to Allowance of Claim of Jefferson Capital Systems, LLC has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44-days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to sustain the objection to Proof of Claim Number 4-1 of Jefferson Capital Systems, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Jefferson Capital Systems, LLC ("Creditor"), Proof of Claim No. 4-1 ("Claim"). The claim is asserted to be unsecured in the amount of \$1,602.79. Objector asserts that the statute of limitations for collection of this debt has expired. The last payment on the account was made on June 12, 2009, which is more than four years prior to the filing of the petition. The Statute of Limitations commencing collection actions on debts of this type is four years pursuant to California Code of Civil Procedure § 337. A state statute of limitations is "applicable law" under 11 U.S.C. § 502(b)(1).

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).

The statute of limitations for collection of this debt has expired. 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.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. [10-41367](#)-B-13 JOHN/VIRGINIA STOVER
BB-2 Bonnie Baker

MOTION FOR COMPENSATION FOR
BONNIE BAKER, DEBTORS' ATTORNEY
6-3-15 [[35](#)]

Final Ruling: No appearance at the July 8, 2015 hearing is required.

The Application for Fees and Expenses in Chapter 13 Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. 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 Debtor's Chapter 13 plan, the Bonnie Baker ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The Applicant and Debtors agreed to fees of \$3,500.00 as indicated in the "Disclosure of Compensation of Attorney for Debtor" (Dkt. 10). The Order Confirming Plan entered May 9, 2011 (Dkt. 28), did not provide for attorney's fees. The Applicant has already received a pre-petition fee of \$2,500.00 from the Debtors and now seeks the remaining balance of the "no-look" fee, or \$1,000.00.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 38).

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. Accordingly, the motion for compensation is granted.

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

Fees	\$1,000.00
Costs and Expenses	\$ 0.00

The court shall enter an appropriate civil minute order consistent with this ruling.

13. [12-20268](#)-B-13 JUSTINO TUAZON AND MARIA MOTION TO MODIFY PLAN
SDB-5 BELTRAN TUAZON 6-1-15 [[94](#)]
W. Scott de Bie

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 Confirming require that the claim of the Internal Revenue Service for \$13,706.38 be provided for as a Class 5 priority claim.

Although the plan fails to provide treatment of the priority claim filed by Internal Revenue Service in the amount of \$13,706.38, the Debtors state that this was inadvertently left out when transferring information from the old form plan to the new form plan. Debtors assert that the proposed modified plan is sufficiently funded to provide for the Internal Revenue Service claim as a Class 5 priority claim. The Debtors propose that the inadvertent error be corrected in an order confirming this modified plan. Specifically, that the Order Confirming require that the claim of the Internal Revenue Service for \$13,706.38 be provided for as a Class 5 priority claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

14. [11-43877](#)-B-13 VINCENT/SHELLY CAPERELLO OBJECTION TO CLAIM OF BANK OF
DF-5 David J. Fillerup AMERICA, N.A., CLAIM NUMBER 9
5-20-15 [[56](#)]

Final Ruling: No appearance at the June 8, 2015 hearing is required.

CONTINUED TO 7/13/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

15. [14-23177](#)-B-13 GERALD YOUNG AND CARMEN MOTION TO MODIFY PLAN
JPJ-2 HEINRICHS YOUNG 5-21-15 [[27](#)]
Diana J. Cavanaugh

Tentative Ruling: The court issues no tentative ruling.

The 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 motion will be determined at the scheduled hearing.

Final Ruling: No appearance at the June 8, 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 the mortgage.

This motion relates to Debtors' Motion to Approve Refinance of Mortgage (Dkt. 31), which was granted by the court on June 3, 2015 (Civil Minute Order, Dkt. 36). The Debtors have re-filed and re-noticed this motion because some of the terms of the last loan approved by this court have changed. The last loan was approved as an "interest only" payment. The new payment in the amount of \$1,679.61 includes principal, interest, taxes, and insurance. The new loan will pay off both the first and second mortgages on the residence and replace it with one new mortgage. The offer is being made by Mountain West Financial and is secured by a new first position deed of trust on the Debtors' residence at 2731 Caldwell Court, Sacramento, California.

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.

The repayment of the new loan does not appear to unduly jeopardize the July 2, 2015, Debtors' performance of the 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 will be granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. [15-22684](#)-B-13 JORGE VASQUEZ MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis 5-21-15 [[23](#)]
Thru #18

CASE DISMISSED: 6/25/15

Final Ruling: No appearance at the July 8, 2015 hearing is required.

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

18. [15-22684](#)-B-13 JORGE VASQUEZ COUNTER MOTION TO DISMISS CASE
MRL-1 Mikalah R. Liviakis 6-24-15 [[39](#)]

CASE DISMISSED: 6/25/15

Final Ruling: No appearance at the July 8, 2015 hearing is required.

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

19. [15-23684](#)-B-13 ALFRED/CAROLYN SHULTS OBJECTION TO CONFIRMATION OF
EJS-2 C. Anthony Hughes PLAN BY HARRY MILLER AND LEAH
Thru #20 MILLER
6-11-15 [[41](#)]

Final Ruling: The Objection to Confirmation of 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 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 motion will be denied as moot, the confirmation hearing having been held on July 1, 2015, and the court having sustained the Chapter 13 Trustee's objections to confirmation of the plan filed May 4, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. [15-23684](#)-B-13 ALFRED/CAROLYN SHULTS OBJECTION TO CONFIRMATION OF
EJS-2 C. Anthony Hughes PLAN BY RICK ROGERS AND LANA
ROGERS
6-11-15 [[46](#)]

Final Ruling: The Objection to Confirmation of 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 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 motion will be denied as moot, the confirmation hearing having been held on July 1, 2015, and the court having sustained the Chapter 13 Trustee's objections to confirmation of the plan filed May 4, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

21. [15-20788](#)-B-13 DANIEL MIRANDA
JPJ-3 Michael O'Dowd Hays

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7, MOTION
TO DISMISS CASE
6-17-15 [[57](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to dismiss this Chapter 13 case.

The Debtor states that his case cannot be converted to a Chapter 7 because he had previously filed a Chapter 7 on September 30, 2014, and received a discharge on February 2, 2015. The Debtor also has no grounds to oppose a dismissal and consents to dismissal.

Therefore, the case is dismissed pursuant to 11 U.S.C. § 1307(c). The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

22. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK
PP-2 W. Scott de Bie

MOTION TO APPROVE VALUATION AND
TRANSFER OF STOCK PURSUANT TO
CONFIRMED PLAN
6-10-15 [[105](#)]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed.

The court will hear any additional argument that the parties wish to present at the scheduled hearing set for July 8, 2015, which the court will also treat as a status conference. This matter will be continued to August 12, 2015, at 10:00 a.m. at which time the court will either render a decision or, if warranted, set additional proceedings.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. [12-34397](#)-B-13 PRISCILLA BELLARD HODGE MOTION TO VALUE COLLATERAL OF
SDB-5 W. Scott de Bie WELLS FARGO BANK, N.A.
6-3-15 [[60](#)]

Final Ruling: No appearance at the June 8, 2015 hearing is required.

CONTINUED TO 7/13/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.