

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 9, 2016 at 1:00 p.m.

- | | | | |
|----|---------------------------------------|------------------|---------------------------------------|
| 1. | <u>13-20903</u> -B-13 | PAULA RAEDER | MOTION TO MODIFY PLAN |
| | SJS-1 | Scott J. Sagaria | 6-29-16 [<u>37</u>] |

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Modify Chapter 13 Plan After Confirmation, the withdrawal being consistent with the opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion is denied without prejudice.

The court will enter an appropriate minute order.

August 9, 2016 at 1:00 p.m.

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Debtor's Motion for Sanctions for Violation of the 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 in part and deny in part the motion for sanctions for violation of the automatic stay.

Introduction

Before the court is a motion by debtor Shelly Clark ("Debtor") for an order imposing sanctions against Citibank N.A. ("Citi") and National Budget Planners of South Florida ("National") for violation of the automatic stay of 11 U.S.C. § 362. Debtor asserts that she received a post-petition collection notice (more accurately described as a monthly statement) from these creditors demanding payment of a pre-petition debt.¹

The court has reviewed the motion (dkt. 93), the notice of hearing (dkt. 94), the Debtor's declaration (dkt. 95), the memorandum of points and authorities (dkt. 96), the exhibit (dkt. 97), and the certificate of service (dkt. 98). Although no opposition has been filed, the court will independently review the record to determine if the motion is meritorious and if sanctions are warranted. The court's findings of fact and conclusions of law made pursuant to Federal Rule of Civil Procedure 52(a) applicable by Federal Rule of Bankruptcy Procedure 7052 and 9014 are set forth below.

Facts

The Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on November 16, 2015. The Debtor scheduled a pre-petition debt owed to Citi for an account ending in "1858" on Schedule F.

On or about December 10, 2015, the Bankruptcy Noticing Center sent Citi notice of the Debtor's bankruptcy filing and a copy of the Debtor's proposed chapter 13 plan. Notice was sent to an address the Debtor believes is commonly used by Citi. Citi, through eCast Settlement Corporation, filed a proof of claim on February 22, 2016. The proof of claim references a Citi account ending in "1858."

On April 16, 2016, National mailed the Debtor a monthly statement demanding payment on an account due Citi ending in "1858." The statement required payment no later than April 27, 2016.

Debtor states that receipt of the monthly statement caused her stress, confusion,

¹Debtor states in her declaration that she has received "collection letters." The motion and memorandum of points and authorities state the same. However, there is only one monthly statement (not a collection notice) submitted as an exhibit to the motion. The attempt by the Debtor and her attorneys to inflate the purported stay violation weighs heavily against their respective credibility.

worry, and aggravation. Debtor asserts the statement violates the automatic stay as a post-petition attempt to collect a pre-petition debt. The Debtor requests (1) \$2,000.00 in compensatory damages, (2) \$3,000.00 in deterrent sanctions, and (3) \$3,500.00 in attorney's fees and costs.

Discussion

The filing of a bankruptcy petition creates an automatic stay. See 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[.]" 11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

Citi, and its agent National, wilfully violated the automatic stay by sending the Debtor a monthly statement after the petition was filed and demanding payment of a pre-petition debt. A willful action is deemed to have occurred when a party knows about the automatic stay and acts intentionally. *In re Eskanos & Adler, P.C.*, 309 F.3d 1210, 1215 (9th Cir. 2002) (citing *In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992)). Based on the notice sent by BNC, and in the absence of evidence to the contrary, the Debtor is entitled to a presumption that Citi, and thereby its agent National, were aware of the Debtor's bankruptcy the automatic stay when National sent the Debtor the monthly statement on Citi's behalf. *Dandino, Inc. v. U.S. Dept. of Trans.*, 729 F.3d 917, 921 (9th Cir. 2013); *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1124 n. 4 (9th Cir. 2007). Furthermore, the mailing of that statement is an intentional act.

In cases of a willful violation, such as this one, the injured individual shall recover actual damages, including costs and attorney's fees. See 11 U.S.C. § 362(k)(1); *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 589 (9th Cir. BAP 1995). Therefore, the court will award the Debtor the following as her actual damages:

- (1) Attorney's fees in the amount of \$150.00, which is half of the \$300.00 hourly billing rate generally charged in this locality. Inasmuch as there was a motion filed in order to bring the stay violation to the court's attention the court can infer that attorney's fees were incurred. However, the Debtor submitted no evidence of the amount of the attorney's fees she incurred to bring the motion. Her attorneys also submitted no billing statements or invoice, or even a declaration that identifies task(s) and time. The court also notes that the motion is a form motion routinely filed by Sagaria Law, P.C., often without much, if any, supporting evidence as in this case. Therefore, the court will exercise its discretion to limit an award of attorney's fees to a lump sum of \$150.00 - a reasonable local billing rate for a half-hour of services preparing the form motion and related documents. See *In re Herbet*, 203 F.3d 831, 1999 WL 1044837 at *1 (9th Cir. 1999) (because the debtors failed to submit adequate proof of the damages they incurred as a result of the IRS's violations of the automatic stay the bankruptcy court did not abuse its discretion in limiting its fees and sanctions award to a lump sum). No further damages are awarded as compensatory damages as the Debtor has not submitted any evidence of any other actual loss.
- (2) Under *Dawson v. Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139 (9th Cir. 2004), "[f]leeting or trivial anxiety or distress does not suffice to support an award [of emotional distress damages]; instead, an individual must suffer significant emotional harm[.]" *Id.* at 1149. The extent of the debtor's purported emotional distress here consists of stress, worry, anxiety, and aggravation. The court is not persuaded those - alone or in conjunction - rise to the level of "significant emotional harm." Therefore, no damages are awarded for emotional distress and any request for such damages is denied with prejudice.

The Debtor also requests what appear to be punitive damages in the form of "deterrent

sanctions." An individual injured by any willful violation of a stay may, in addition to compensatory damages, be awarded punitive damages under § 362(k)(1). Although 362(k)(1) permits the recovery of such damages "in appropriate circumstances," the Ninth Circuit has cautioned that punitive damages are only appropriate if there has been some showing of reckless or callous disregard for the law or rights of others. *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 228 (9th Cir. 1989). The bankruptcy court has considerable discretion in granting or denying punitive damages under 362(k). *Id.*

There is no evidence whatsoever that Citi and/or National routinely engage in the type of conduct identified in the motion. There also is no evidence that the Debtor was sent more than one monthly statement or in any manner harassed to pay a pre-petition debt. Therefore, the Debtor's request for punitive damages or "deterrent sanctions" is denied with prejudice.

Conclusion

Based on the foregoing, it is ordered that the Debtor's motion is granted in part and denied as part as follows:

- (1) Granted in that the Debtor is awarded actual damages in the form of attorney's fees in the amount of \$150.00;
- (2) Denied with prejudice as to the Debtor's request for punitive damages.

The court will enter an appropriate minute order adopting and incorporating this decision.

3. [15-26411](#)-B-13 ROBERT/DEBRA SWEENEY MOTION TO MODIFY PLAN
FF-3 Gary Ray Fraley 7-1-16 [[67](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion to Confirm Second Modified Plan Dated July 1, 2016, 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 debtors 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 July 1, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

4. [16-23111](#)-B-13 PATRIA MATA
JPJ-1 Gerald B. Glazer

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-7-16 [[12](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 9, 2016, 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 other objection to confirmation, the plan filed May 12, 2016, will be confirmed.

The court will enter an appropriate minute order.

5. [16-23113](#)-B-13 CHAD ORCUTT
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-7-16 [[20](#)]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,525.00, which represents the first plan payment due. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor's Schedule I shows a deduction on line 5c for voluntary contributions for retirement plans. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan does not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed May 24, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

6. [16-23416](#)-B-13 KHANH DAN HUYNH OBJECTION TO CONFIRMATION OF
APN-1 Jasmin T. Nguyen PLAN BY WELLS FARGO BANK, N.A.
Thru #9 6-29-16 [[28](#)]

Tentative Ruling: The Secured Creditor, Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services'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)(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 dismiss the objection as moot, the Debtor and creditor Wells Fargo Bank, N.A. having entered into a stipulation regarding the valuation of the 2014 Honda Odyssey at Item #9. Additionally, the Trustee's objections to confirmation are resolved at Item #7.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is dismissed as moot and the plan filed May 26, 2016, is confirmed.

The court will enter an appropriate minute order.

7. [16-23416](#)-B-13 KHANH DAN HUYNH OBJECTION TO CONFIRMATION OF
JPJ-1 Jasmin T. Nguyen PLAN BY JAN P. JOHNSON
7-14-16 [[38](#)]

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

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

First, feasibility depends on the granting of a motion to value collateral of Wells Fargo Dealer Services for a 2014 Honda Odyssey. That motion was granted at Item #6.

Second, feasibility depends on the granting of a motion to avoid judgment lien of Capital One Bank (USA), N.A. That motion was granted at Item #8.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 26, 2016, is confirmed.

The court will enter an appropriate minute order.

8. [16-23416](#)-B-13 KHANH DAN HUYNH MOTION TO AVOID LIEN OF CAPITAL
JTN-1 Jasmin T. Nguyen ONE BANK (USA), N.A.
6-23-16 [[17](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion to Avoid the Fixing of Liens Pursuant to 11 U.S.C. § 522(f)(1)(A) 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 to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), National Association ("Creditor") against the Debtor's property commonly known as 8573 Madeira Court, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$22,014.01. An abstract of judgment was recorded with Sacramento County on April 23, 2015, which encumbers the Property. All other liens recorded against the Property total \$288,274.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$365,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

9. [16-23416](#)-B-13 KHANH DAN HUYNH
JTN-2 Jasmin T. Nguyen

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-23-16 [[22](#)]

Tentative Ruling: The Motion to Value Collateral of Wells Fargo Bank, N.A. 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to dismiss the matter as moot. The Debtor and Wells Fargo Dealer Services have entered into a stipulation that fully resolves the motion to value collateral for a 2014 Honda Odyssey.

The court will enter an appropriate minute order.

10. [16-20018](#)-B-13 JOJIE GOOSELAU
PGM-4 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
RC WILLEY HOME FURNISHINGS,
INC.
7-12-16 [[49](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion to Value Collateral of RC Willey Home Furnishings, Inc. 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 RC Willey Home Furnishings, Inc. at \$400.00.

The motion filed by Debtor to value the secured claim of RC Willey Home Furnishings, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a washer/dryer set ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by RC Willey Home Furnishings, Inc. dba RC Willey Financial Services is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The total dollar amount of the obligation represented by the financing agreement with RC Willey Home Furnishings, Inc. is \$5,552.97 as stated in Claim No. 5. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$400.00. This is based on Debtor's assertion that a brand new, identical model retails at \$699.00. Debtor's Personal Property, on the other hand, is over 5 years old.

No response has been filed by the Creditor.

The Creditor's claim secured by a lien on the asset's title is determined to be under-collateralized and in the amount of \$400.00. *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.

The court will enter an appropriate minute order.

11. [16-23119](#)-B-13 DARLENE CHIAPUZIO-WONG
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-7-16 [[21](#)]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,000.00, which represents approximately .23 plan payments. Before this matter is heard, an additional plan payment in the amount of \$4,270.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, 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.

Third, feasibility depends on the granting of motions to value collateral for Santander Consumer USA, John Laughlin, and Steven Beede. Thus far, the docket reflects motions to value collateral of only Luis Garcia Samano and BPE Law Group. The Debtor has not filed, set for hearing, or served on the respondent creditors and trustee motions to value the collateral.

The plan filed May 13, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

12. [16-23420](#)-B-13 IVAN SYTAY
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
7-14-16 [[18](#)]

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

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

Subsequent to the filing of the Trustee's objection, the pro se Debtor filed an amended plan on August 2, 2016. However, it does not appear that the pro se Debtor has scheduled a confirmation hearing or provided notice and service to interest parties. The earlier plan filed June 7, 2016, is not confirmed.

The court will enter an appropriate minute order.

13. [12-34525](#)-B-13 VICTORIA RAMOS AND LARRY MOTION FOR COMPENSATION FOR
PGM-5 MALLARI PETER G. MACALUSO, DEBTORS'
Peter G. Macaluso ATTORNEY
7-8-16 [[101](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Application for Additional Attorney 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 motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$5,000.00. Dkt. 63. It does not appear that the Debtors opted in Local Bankr. R. 2016-1 at the time of confirmation. Applicant now seeks additional compensation in the amount of \$1,995.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 104.

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 compensation 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).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would receive a trial loan modification that required a plan modification. 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 Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	\$1,995.00
Additional Costs and Expenses	\$ 0.00

The court will enter an appropriate minute order.

14. [16-23626](#)-B-13 CHARLES BARNARD
AP-1 Eric W. Vandermey
Thru #15

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR BANK OF
AMERICA, N.A.
7-14-16 [[28](#)]

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)(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 overrule the objection but deny confirmation of the plan for reasons stated at Item #15.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$4,712.26 in pre-petition arrearages. Although the creditor had filed a proof of claim in Debtor's prior case, the creditor has not yet filed a proof of claim in this case. The creditor states that it will file a proof of claim prior to the claims bar deadline, but provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim in this case or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed June 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #15. The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

15. [16-23626](#)-B-13 CHARLES BARNARD
JPJ-1 Eric W. Vandermey

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
7-15-16 [[39](#)]

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

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

First, although the Debtor did not appear at the duly noticed first meeting of creditors set for July 7, 2016, the Debtor did appear at the continued meeting of creditors held on July 21, 2016, as required pursuant to 11 U.S.C. § 343.

Second, 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).

Third, 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).

Fourth, feasibility depends on the granting of a motion to value collateral of a Mercedes Benz. That motion was denied on July 5, 2016, and subsequently continued to August 1, 2016, for an evidentiary hearing.

Fifth, according to Schedule J of the petition filed June 2, 2016, the Debtor owes a domestic support obligation. The Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist pursuant to Local Bankr. R. 2015-1(b)(6). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Sixth, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. There appears to be a discrepancy of \$442.00 in domestic support obligations as listed in the Statement of Current Monthly Income and Calculation of Disposable Income (Means Test) and Schedule I of the petition. Based on this discrepancy, the Debtor's correct monthly disposable income is or should be \$248.93 and the Debtor should pay no less than \$14,935.80 to general unsecured creditors. The plan does not propose to pay anything to general unsecured creditors.

The plan filed June 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

16. [14-29732](#)-B-13 THOMAS ANKARBERG
UST-2 Pro Se
Add #45

MOTION FOR RELIEF FROM
UNAUTHORIZED AND FRAUDULENT
BANKRUPTCY FILING
6-28-16 [[29](#)]

DEBTOR DISMISSED: 10/20/2014

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion of the United States Trustee for Relief from Unauthorized and Fraudulent Bankruptcy Filing 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.

The purported Debtor in this case did not file, nor authorize another to file on his behalf, this bankruptcy case. Rather, Debtor's identity was stolen and the case was filed without his signature or authority.

For that reason, and pursuant to 11 U.S.C. §§ 105(a) and 107(b)(2) the clerk shall note prominently on the docket that this case was not filed by Debtor and that it was filed fraudulently and without his authority or cooperation.

The court will enter an appropriate minute order.

17. [15-26933](#)-B-13 PETE GARCIA
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM
PLAN
2-8-16 [[49](#)]

Tentative Ruling: This matter was continued from April 5, 2016, and again from June 7, 2016, to allow E*Trade Bank to amend its Claim No. 5 or allow the Debtor to file an objection to the claim to allow the claim as secured.

The Motion to Confirm Debtors' [sic] First Amended Plan Filed on February 8, 2016, was originally 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.

The Debtor's Objection to the Claim of E*Trade Filed on January 13, 2016, Claim No. 5 was sustained and the claim was allowed as secured. Dkt. 80. The Trustee's objection regarding over-extension of the commitment period imposed by 11 U.S.C. § 1325(b)(4) appears to be resolved. There are only \$3,757.60 in unsecured claims and the plan is feasible.

The amended plan filed February 8, 2016, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

18. [16-23233](#)-B-13 STACY DEL RIO
[Thru #19](#) Ted A. Greene

OBJECTION TO CONFIRMATION OF
PLAN BY BUTTE COUNTY TAX
COLLECTOR
6-27-16 [[13](#)]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A 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 having filed a response stating that she will file a new plan that will provide for the interest owed on delinquent property taxes.

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

The court will enter an appropriate minute order.

19. [16-23233](#)-B-13 STACY DEL RIO
JPJ-1 Ted A. Greene

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
7-18-16 [[21](#)]

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

The court's decision is to sustain the objection and deny confirmation of the plan, the Debtor having filed a response stating that she will file a new plan that will cure the Chapter 13 Trustee's concerns.

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

The court will enter an appropriate minute order.

20. [16-23333](#)-B-13 ALFONSO/CAMMIE MACIEL
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-7-16 [[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)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, although the Debtors did not appear at the meeting of creditors set for June 20, 2016, the Debtors did appear at the continued meeting of creditors set for July 7, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,520.00, which represents the first plan payment that was due June 25, 2016. By the time this matter is heard, an additional plan payment in the amount of \$1,520.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtors' projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). The Calculation of Disposable Income (Form B22C-2) shows that the Debtors' monthly disposable income is \$3,444.21 and that the Debtors must pay no less than \$206,652.26 to general unsecured creditors. The plan will pay only \$0.00 to general unsecured creditors.

The plan filed June 6, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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.

The court will enter an appropriate minute order.

21. [16-20634](#)-B-13 CARL TINNEY AND EILEEN
PLC-10 RICKENBACH
Peter L. Cianchetta

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CIANCHETTA AND
ASSOCIATES FOR PETER
CIANCHETTA, DEBTORS'
ATTORNEY(S)
7-13-16 [[66](#)]

DEBTOR DISMISSED:

04/03/2016

JOINT DEBTOR DISMISSED:

04/03/2016

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Compensation by Peter Cianchetta as Debtor's [sic] Attorney (Opting Out of the Guidelines) (First Interim Application for Fees) 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.

FEES AND COSTS REQUESTED

Peter Cianchetta ("Applicant"), the attorney to Chapter 13 Debtors Carl Tinney and Eileen Rickenbach ("Clients"), makes a first interim request for the allowance of \$8,394.50 in fees and \$620.00 in expenses. After application of the \$380.00 retainer and the \$620.00 paid to counsel for the filing fee, a total of \$8,014.50 in compensation is sought by this motion. Applicant asserts that the Clients have opted out of the Guidelines. The period for which the fees are requested is for January 11, 2016, through March 3, 2016.

To date, fees in the amount of \$4,375.00 have been paid by the Trustee upon dismissal of the case. Additionally, the Declaration of Peter Cianchetta states that Applicant will cap the fees at the amount actually paid by the Debtor and Trustee, \$1,000.00 and \$4,375.00 respectively, for a total of fees and costs of \$5,375.00 and forgive the balance of the fees.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 68, Exh. B, C.

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;

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(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 the following capped fees and costs as compensation to this professional in this case:

Capped Fees and Costs Requested	\$5,375.00
Less Amount Paid by Trustee	\$4,375.00
Less Amount Paid by Debtors	\$1,000.00
Total Additional Fees Awarded	\$ 0.00

There being no further attorney's fees and costs requested or awarded, the court will enter an appropriate minute order adopting and incorporating this tentative decision.

22. [10-46035](#)-B-13 ELIZABETH FRANKLIN
RLG-8 Robert L. Goldstein

MOTION TO AVOID LIEN OF J.P.
MORGAN CHASE BANK, N.A.
7-11-16 [[119](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Application to Enter Judgment Voiding Lien of J.P. Morgan Chase Bank N.A. and/or Any Servicers or Successors 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 to avoid judicial lien.

This is a request for an order avoiding the lien of J.P. Morgan Chase Bank N.A. and/or Any Servicers or Successors ("Creditor") against the Debtor's property commonly known as 9952 Villa Granito Lane, Granite Bay, California ("Property").

On December 13, 2010, the court entered an order granting the Debtor's motion to value the Property and found that Creditor's claim secured by a second deed of trust to be completely under-collateralized. The Creditor's secured claim was determined to be in the amount of \$0.00. Dkt. 33. The Debtor received a discharge on January 11, 2016.

Pursuant to the Debtor's Schedule A, the subject real property had an approximate value of \$287,065.00 as of the date of the petition. A first deed of trust recorded against the property totaled \$345,626.00.

Debtor had claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$900.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the lien. Therefore, the fixing of this lien is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

23. [16-23136](#)-B-13 PHILLIP/TRUDY MENDOZA OBJECTION TO CONFIRMATION OF
APN-1 Peter L. Cianchetta PLAN BY WELLS FARGO BANK, N.A.
Thru #25 6-15-16 [[15](#)]

Tentative Ruling: Secured Creditor, Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services'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)(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 but deny confirmation for reasons stated at Item #25.

The plan filed May 25, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

24. [16-23136](#)-B-13 PHILLIP/TRUDY MENDOZA OBJECTION TO CONFIRMATION OF
EAT-1 Peter L. Cianchetta PLAN BY WELLS FARGO BANK, N.A.
7-7-16 [[25](#)]

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)(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 but deny confirmation for reasons stated at Item #25.

The plan filed May 25, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

25. [16-23136](#)-B-13 PHILLIP/TRUDY MENDOZA OBJECTION TO CONFIRMATION OF
JPJ-1 Peter L. Cianchetta PLAN BY JAN P. JOHNSON
7-7-16 [[22](#)]

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

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

First, feasibility depends on the granting of motions to value collateral for Wells Fargo Dealer Services and Franklin Credit Management Corporation. The Debtors have

failed to file, set for hearings, and serve on the respondent creditors and the Trustee stand-alone motions to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Second, the claim of Wells Fargo Bank is mis-classified as a Class 1 claim. The pre-written language of the form plan at Section 2.08(c) states "Other than to cure any arrearage, this plan does not modify Class 1 claims." Yet according to the Additional Provisions, the creditor will not receive ongoing monthly contractual payment but will receive an "adequate protection" payment of \$1,350.00 per month pending the approval of a loan modification. The claim is not a Class 1 claim in substance because it is not a claim that will be receiving ongoing monthly contractual payments in accordance with 11 U.S.C. § 1322(b)(5). Because the Additional Provisions specifically state that the creditor will receive "adequate protection" payments instead of the ongoing monthly contractual payments, the plan modifies a claim, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1).

The plan filed May 25, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

26. [16-23636](#)-B-13 JENNIFER MIZE
JPJ-1 Pro Se
Thru #27

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
7-14-16 [[29](#)]

CASE DISMISSED: 7/26/16

Final Ruling: No appearance at the August 9, 2016, hearing is required. The case was dismissed on July 26, 2016.

The court will enter an appropriate minute order.

27. [16-23636](#)-B-13 JENNIFER MIZE
PPR-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
7-5-16 [[20](#)]

CASE DISMISSED: 7/26/16

Final Ruling: No appearance at the August 9, 2016, hearing is required. The case was dismissed on July 26, 2016.

The court will enter an appropriate minute order.

28. [12-34244](#)-B-13 EMANUEL/DANIELLE DOUGLAS MOTION TO MODIFY PLAN
MET-2 Mary Ellen Terranella 6-19-16 [[35](#)]

Tentative Ruling: The Motion to Modify 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 was filed by the Trustee and a response was filed by the Debtors.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following: "The Debtors have paid a total of \$166,280.00 to the Trustee through June 25, 2016. Commencing July 25, 2016, monthly plan payments shall be \$456.00 for the remainder of the plan."

The modified plan filed June 19, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

29. [16-23244](#)-B-13 CAMILO VILLEGAS
JPJ-1 Marc A. Carpenter

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-7-16 [[16](#)]

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

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

First, the Calculation of Disposable Income (Form B22C-1) includes an improper expense at line 5 for ordinary and necessary business expenses of \$22,130.00. A Chapter 13 Debtor may not deduct business expenses from gross receipts to calculate current monthly income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008). Based on the gross receipts of \$25,800.00, Debtor's annualized current monthly income is \$309,600.00, which is greater than the applicable median family income of \$50,579.00. In order to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B), Debtor must complete forms B22C-1 and C-2 in their entirety.

Second, feasibility depends on the granting of a motion to value collateral for Employment Development Department. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a stand alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j)

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

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

The court will enter an appropriate minute order.

30. [16-23447](#)-B-13 RUBEN FRAGOSO AND LAURA OBJECTION TO CONFIRMATION OF
JPJ-1 MIRANDA PLAN BY JAN P. JOHNSON AND/OR
Steele Lanphier MOTION TO DISMISS CASE
7-14-16 [[21](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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, although the Debtors appeared at the first meeting of creditors set for July 7, 2016, as required pursuant to 11 U.S.C. § 343, Debtor Ruben Fragoso did not provide proof of his social security number as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting was continued to August 4, 2016, to allow the Debtor the opportunity to provide such proof.

Second, the Debtors have not filed detailed statements showing gross receipt and ordinary and necessary expenses related to either of their businesses. Feasibility of the plan cannot be fully assessed pursuant to 11 U.S.C. §§ 1325(a)(3) and (6).

Third, the Debtors have not provided copies of all bank statements and pay stubs for the 6-month period preceding the filing of the case (November 2015 through April 2016). Without these documents, it cannot be determined if the plan complies with 11 U.S.C. §§ 1325(a)(3) or (6) or § 1325(b)(1)(B).

Fourth, the Debtors have not amended their Statement of Financial Affairs to reflect their interest in a handyman business and a house cleaning business. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fifth, feasibility depends on the granting of a motion to value collateral of Bank of America for the second deed of trust on the Debtors' residence. That motion was heard and granted on August 2, 2016.

Sixth, the terms for payment of the Debtors' attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtors' attorney's fees and any other administrative expense through the plan with a monthly payment specified at \$0.00.

The plan filed May 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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.

The court will enter an appropriate minute order.

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

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

First, the Debtors did not appear at the duly noticed first meeting of creditors set for July 7, 2016, as required pursuant to 11 U.S.C. § 343. The meeting was subsequently continued to August 4, 2016, and although the Debtors' attorney appeared, the Debtors did not appear.

Second, the plan payment in the amount of \$4,175.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$4,347.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, due to the fact that the plan payment does not equal the aggregate of the dividends stated in the plan, the plan will take approximately 75 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 Debtors are delinquent to the Chapter 13 Trustee in the amount of \$4,175.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$4,175.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed May 27, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

32. [16-23555](#)-B-13 CAMMY WOOD OBJECTION TO CONFIRMATION OF
JPJ-1 Jeffrey P. Guyton PLAN BY JAN P. JOHNSON
Thru #34 7-14-16 [[40](#)]

DEBTOR DISMISSED: 8/05/16

Final Ruling: No appearance at the August 9, 2016, hearing is required. This case was dismissed on August 5, 2016.

The court will enter an appropriate minute order.

33. [16-23555](#)-B-13 CAMMY WOOD MOTION TO DISMISS CASE
ME-1 Jeffrey P. Guyton 7-12-16 [[30](#)]

DEBTOR DISMISSED: 8/05/16

Final Ruling: No appearance at the August 9, 2016, hearing is required. This case was dismissed on August 5, 2016.

The court will enter an appropriate minute order.

34. [16-23555](#)-B-13 CAMMY WOOD OBJECTION TO CONFIRMATION OF
ME-2 Jeffrey P. Guyton PLAN BY FRANK R. LEDESMA AND
LOUISE D. LEDESMA
7-14-16 [[35](#)]

DEBTOR DISMISSED: 8/05/16

Final Ruling: No appearance at the August 9, 2016, hearing is required. This case was dismissed on August 5, 2016.

The court will enter an appropriate minute order.

35. [16-23659](#)-B-13 ANDREY KIRICHENKO
AP-1 Mark Shmorgon
Thru #36

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-13-16 [[17](#)]

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)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Wells Fargo Bank, N.A.'s objection, the Debtor filed an amended plan on July 15, 2016. The confirmation hearing for the amended plan is scheduled for September 6, 2016. The earlier plan filed June 3, 2016, is not confirmed.

The court will enter an appropriate minute order.

36. [16-23659](#)-B-13 ANDREY KIRICHENKO
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
7-14-16 [[20](#)]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 15, 2016. The confirmation hearing for the amended plan is scheduled for September 6, 2016. The earlier plan filed June 3, 2016, is not confirmed.

The court will enter an appropriate minute order.

37. [16-22964](#)-B-13 CHANCE/MICHELE PETERSON
Richard L. Jare

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
6-23-16 [[28](#)]

Tentative Ruling: The Objection to Confirmation of Debtor's [sic] 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.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$24,925.65 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

There being no other objection to confirmation, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 22, 2016, is confirmed.

The court will enter an appropriate minute order.

38. [15-27866](#)-B-13 KENNETH/CHRISTINA SHAW OBJECTION TO CLAIM OF CAVALRY
JPJ-2 Scott J. Sagaria SPV I, LLC, CLAIM NUMBER 1
6-8-16 [[42](#)]

Final Ruling: No appearance at the August 9, 2016, 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 Claim No. 1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1. The claim is asserted to be in the amount of \$878.32. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 11, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 7, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

39. [16-23567](#)-B-13 JENNY JOHNS
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-14-16 [[21](#)]

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

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

First, Debtor's counsel was required to amend the Statement of Social Security Number filed with the court to correct a typo in Debtor's social security number.

Second, the Debtor has not provided the Trustee with requested copies of her most recent pay stubs from her new job. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtor has not amended the Statement of Financial Affairs #4 as requested by the Trustee at the meeting of creditors on July 7, 2016, to reflect wages received in 2015 and 2016.

Fourth, the plan does not comply with 11 U.S.C. § 1325(b)(4). The applicable commitment period is five years. The proposed duration of plan payments is only three years and the plan does not propose payment in full of the allowed unsecured claims.

The plan filed June 10, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

40. [16-23470](#)-B-13 ELAINE ANCHETA
HWW-1 Hank W. Walth
Thru #43

MOTION TO VALUE COLLATERAL OF
CARFINANCE CAPITAL, LLC
7-11-16 [[23](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Debtor's Motion to Value Collateral of CarFinance Capital LLC 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 CarFinance Capital LLC at \$9,548.00.

The motion filed by Debtor to value the secured claim of CarFinance Capital LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Mini Hardtop Cooper S ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,548.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by CarFinance Capital is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in January 2014 and refinanced on May 7, 2014, with CarFinance Capital LLC. The 910-day restriction on valuing a motor vehicle as set forth in the hanging paragraph of 11 U.S.C. § 1325(a) is not applicable because CarFinance Capital LLC does not hold a purchase money security interest. 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 \$9,548.00. 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.

The court will enter an appropriate minute order.

41. [16-23470](#)-B-13 ELAINE ANCHETA
HWW-2 Hank W. Walth

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
7-11-16 [[30](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

Debtor's Motion to Value Collateral of Internal Revenue Service (Lien Recorded March 21, 2007) 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 the Internal Revenue Service at \$9,845.00.

The motion filed by Debtor to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property including a 2009 Mini Hardtop Cooper S, household furnishings, electronics, jewelry, wearing apparel, and financial assets (collectively "Personal Property"). The Debtor asserts that the gross value of the Personal Property is \$19,393.00 as of the petition filing date. The Debtor further asserts that the net value of the Personal Property minus the vehicle, which is encumbered, is \$9,845.00. Debtor seeks to value the Personal Property minus the vehicle at a replacement value of \$9,845.00. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by Internal Revenue Service is the claim which may be the subject of the present motion. Claim No. 5 takes into account personal income taxes owed by the Debtor for tax years 2003, 2004, 2005, 2007, 2008, and 2009. This motion is in regard to years 2003, 2004, and 2005 only.

Discussion

The replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a) (2).

On March 16, 2007, the Internal Revenue Service recorded a tax lien in Sacramento County for personal income taxes owed by the Debtor for tax years 2003, 2004, and 2005. The approximate amount owed as represented in Debtor's motion total \$68,982.00, which takes into account additional interests and penalties and deducts offset refunds for tax years 2014 and 2015. Pursuant to 11 U.S.C. § 506(a), the lien is a secured claim to the extent of the value of the property of the Debtor's estate.

Debtor asserts that the price a retail merchant would charge for the Personal Property minus the vehicle is \$9,845.00. 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 \$9,845.00. 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.

The court will enter an appropriate minute order.

42. [16-23470](#)-B-13 ELAINE ANCHETA
HWW-3 Hank W. Walth

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
7-11-16 [[35](#)]

Final Ruling: No appearance at the August 9, 2016, hearing is required.

Debtor's Motion to Value Collateral of Internal Revenue Service (Lien Recorded May 18, 2016) 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 the Internal Revenue Service at \$0.00.

The motion filed by Debtor to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property including a 2009 Mini Hardtop Cooper S, household furnishings, electronics, jewelry, wearing apparel, and financial assets (collectively "Personal Property"). The Debtor asserts that the gross value of the Personal Property is \$19,393.00 as of the petition filing date. The Debtor further asserts that the net value of the Personal Property minus the vehicle, which is encumbered, is \$9,845.00. Debtor seeks to value the Personal Property minus the vehicle at a replacement value of \$9,845.00. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by Internal Revenue Service is the claim which may be the subject of the present motion. Claim No. 5 takes into account personal income taxes owed by the Debtor for tax years 2003, 2004, 2005, 2007, 2008, and 2009. This motion is in regard to years 2007, 2008, and 2009 only.

Discussion

The replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

On May 18, 2016, the Internal Revenue Service recorded a tax lien in Sacramento County for personal income taxes owed by the Debtor for tax years 2007, 2008, and 2009. The approximate amount owed as represented in Debtor's motion total \$103,962.00, which takes into account additional interests and penalties. Pursuant to 11 U.S.C. § 506(a), the lien is a secured claim to the extent of the value of the property of the Debtor's estate.

Debtor asserts that the price a retail merchant would charge for the Personal Property minus the vehicle is \$9,845.00. 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 \$0.00. 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.

The court will enter an appropriate minute order.

43. [16-23470](#)-B-13 ELAINE ANCHETA
JPJ-1 Hank W. Walth

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-14-16 [[40](#)]

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

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

Feasibility depends on the granting of motions to value collateral of CarFinance Capital LLC for a 2009 Mini Hardtop Cooper and collateral of the Internal Revenue Service for the Debtor's personal property. These motions to value were granted at Items No. 40 through 42.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed June 10, 2016, is confirmed.

The court will enter an appropriate minute order.

44. [15-24771](#)-B-13 CARLOS MAXIMO, JR. AND
GW-2 ELIZABETH MAXIMO
Gerald L. White

MOTION FOR COMPENSATION FOR
GERALD L. WHITE, DEBTORS'
ATTORNEY
7-11-16 [[63](#)]

DEBTOR DISMISSED:

05/05/2016

JOINT DEBTOR DISMISSED:

05/05/2016

Tentative Ruling: The Motion for Final Approval of Debtors' Attorney Fees and/or Costs 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).

As the court understands the motion, Gerald L. White ("Applicant") requests final approval of attorney's fees and costs totaling \$4,724.42, which consists of \$3,311.00 that the Debtors paid pre-petition to Applicant and an additional \$1,413.42 that was paid post-petition through the Debtors' plan. In other words, Applicant seeks final approval for attorney's fees and costs he has already received and requests no more. In that respect, the motion will be granted and the attorney's fees and costs in the amount of \$4,724.42 requested and already paid are approved on a final basis with no further payment of any additional attorney's fees and costs.

Of course, if the court misapprehends Applicant's request, rather than deny Applicant's motion without prejudice, as was done with the prior motion because a significant amount of Applicant's billing entries included "lumped" time that precluded the court from making any informed reasonableness determination and Applicant's retainer agreement appeared to violate Local Bankr. R. 2017-1, the court will provide Applicant an opportunity to be heard and Applicant is free to appear on Tuesday, August 9, 2016, at 1:00 p.m. (**in person, no phone appearance permitted**) to further explain his motion and his request for attorney's fees and costs.

Otherwise, there being no other objection to the final approval of the attorney's fees and costs already paid to Applicant both pre- and post-petition and there being no further attorney's fees and costs requested or awarded, the court will enter an appropriate minute order adopting and incorporating this tentative decision.

45. [14-28372](#)-B-13 PATRICIA ANKARBERG
UST-2 Poh Yee Neo

Add #16

MOTION FOR RELIEF FROM
UNAUTHORIZED AND FRAUDULENT
BANKRUPTCY FILING
6-28-16 [[25](#)]

DEBTOR DISMISSED: 08/29/2014

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion of the United States Trustee for Relief from Unauthorized and Fraudulent Bankruptcy Filing 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.

The purported Debtor in this case did not file, nor authorize another to file on her behalf, this bankruptcy case. Rather, Debtor's identity was stolen and the case was filed without her signature or authority.

For that reason, and pursuant to 11 U.S.C. §§ 105(a) and 107(b)(2) the clerk shall note prominently on the docket that this case was not filed by Debtor and that it was filed fraudulently and without her authority or cooperation.

The court will enter an appropriate minute order.

STATE FARM MUTUAL AUTOMOBILE
INS. CO. VS.

Final Ruling: No appearance at the August 9, 2016, hearing is required.

The Motion for Relief From the Automatic 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). 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 relief from stay.

State Farm Mutual Automobile Ins. Co. ("Movant") seeks relief from the automatic stay in order to allow *State Farm Mutual Automobile Ins. Co. v. Melinda N. Borg* ("State Court Litigation") to be concluded. The moving party has provided the Declaration of Joseph M. Pleasant to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Joint Debtor.

The Pleasant Declaration states that its insured was in a car accident that involved Joint Debtor, who is insured by Liberty Mutual. Movant paid for the repairs to its insured's vehicle and now has a subrogation claim in the amount of \$1,822.65 against Joint Debtor. On April 11, 2016, Movant filed a lawsuit in the Superior Court of California, County of Sacramento against Joint Debtor and other parties involved in the accident. On or about June 1, 2016, Movant received notice of the automatic stay submitted by Liberty Mutual's attorney. Movant asserts that Liberty Mutual has accepted its obligation to defend Joint Debtor. Movant seeks an order that will allow it to pursue the litigation for the purpose of establishing liability that Joint Debtor's carrier would be obligated to pay. Movant further asserts that it will not enforce any judgment against Joint Debtor personally.

No parties have filed opposition to the motion to date.

The court finds that the nature of the State Court Litigation case warrants relief from stay for cause. The court shall issue a minute order modifying the automatic stay as it applies to the Joint Debtor to allow the Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the August 9, 2016, hearing is required.

Debtor's Objection to Claim #2-1, Filed by Real Time Resolutions and Attorney Fees in Defense Thereof 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 Claim No. 2 of Real Time Resolutions, Inc. and the claim is disallowed in its entirety.

Jeffery Mayhew, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Real Time Resolutions, Inc. ("Creditor"), Claim No. 2. The claim is asserted to be unsecured in the amount of \$265,793.82. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. Creditor's proof of claim does not list a date the last payment was received. However, Debtor asserts that he has not made payments on this debt since approximately December 2008. Moreover, Debtor asserts that he had lost the real property located at 2967 Candleberry Way, Fairfield, California, from which the home equity line of credit was taken, on or about December 2008. This is more than four years prior to the filing of this case. Hence, when the case was filed on April 1, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

No response has been filed by the Creditor.

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.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 3 months. The Debtor's two prior bankruptcy cases were dismissed due to the incomplete filing of documents (case nos. 16-23014, 16-23743).

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

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).

According to the Supplemental Declaration of Sherron D. Thomas, the two prior bankruptcy cases and this bankruptcy case were filed in an effort to save her two vehicles and personal residence, which is located at 15 Emporia court, Elk Grove, California, and scheduled for a foreclosure sale by Carrington Mortgage Services, LLC. The Debtor states that she does not want to lose her home because she has lived there since 1996, her 19-year-old daughter was born there, and finding and incurring costs associated with moving to alternative housing would be more costly than staying at her current residence and paying through the proposed Chapter 13 plan.

The Debtor further asserts that her she failed to gather all required documents in the two prior cases due to significant medical issues. Debtor states that she suffers from rheumatism, arthritis, and disorders of the joints, muscles, and ligaments. Moreover, Debtor contends that she suffers from panic and anxiety and was overwhelmed when faced with the task of providing necessary paperwork, and that her godmother/foster mother who otherwise assists Debtor with gathering paperwork was too busy and has her own health issues. The Debtor states that her present case differs from her two prior bankruptcy cases because she has become able to file all required documents.

The Debtor has 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.

The court will enter an appropriate minute order.