UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: August 20, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 20, 2019 at 1:00 p.m.

1.	15-24602-B-13 SLE-1	RAFAEL/MARGARITA GUTIERREZ Steele Lanphier	MOTION TO MODIFY PLAN 7-16-19 [69]

Final Ruling

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

The court's decision is to permit the requested modification and confirm the modified plan.
11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

2.	19-21802-B-13 MB-1	JOSE PEREZ Michael Benavides	CONTINUED MOTION TO CONFIRM PLAN 6-23-19 [41]

No Ruling

3.	19-23707-B-13 NFS-1	MICHAEL/CAROLINE PANOPIO Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY LOANCARE, LLC 8-1-19 [26]

Tentative Ruling

The objection 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). 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.

Objecting creditor LoanCare, LLC, as servicer for Lakview Loan Servicing, LLC, holds a deed of trust secured by the Debtors' residence. The creditor asserts $4,150.08 in pre-petition arrearages but has not yet filed a proof of claim. However, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor has not filed a proof of claim and 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.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed June 24, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

[IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.]

The court will enter a minute order.

4.	18-27311-B-13 JPJ-2	KARLA ANTONETTE GAMA Pauldeep Bains	OBJECTION TO CLAIM OF NETCREDIT, CLAIM NUMBER 10 7-3-19 [35]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 10 of Netcredit and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Netcredit ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $8,621.51. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 29, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's proof of claim was filed March 11, 2019.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5.	19-23812-B-13 JHW-1	JINA HALE Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC 7-12-19 [19]

Tentative Ruling

The objection 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). 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.

TD Auto Finance LLC ("Creditor") objects to confirmation on grounds that the Debtor's plan provides Creditor with an interest rate of only 5.50% and does not take into account the greater risk of default by the Debtor. Creditor asserts that the interest rate should be increased upwards by one percent for each risk: (1) the depreciation of the 2015 Nissan Armada with continued use and time, and (2) the period of which the plan provides repayment to Creditor is approximately 13 months beyond the original terms of the contract.

Discussion

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., August 16, 2019, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.25%. Here, the plan proposes a 5.50% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, a debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

The court finds that the appropriate interest rate should be about 1.5% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the Creditor that would warrant its entitlement to 7.50%. Accordingly, a rate of 6.75% suffices. The court sustains the objection as to increasing the interest rate but overrules the objection as to setting the interest rate at 7.50%.

The plan filed June 14, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6.	18-26913-B-13 MOH-2	ROBERT SIMMONS Michael O'Dowd Hays	MOTION TO MODIFY PLAN 7-3-19 [48]

No Ruling

7. 19-23913-B-13 JPJ-1 **Thru #8**
GERARDO ABSALON
Bert M. Vega
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-1-19 [23]

Tentative Ruling

The objection 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). 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 August 12, 2019. The confirmation hearing for the amended plan is scheduled for October 1, 2019. The earlier plan filed June 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. 19-23913-B-13 NLG-1
GERARDO ABSALON
Bert M. Vega
OBJECTION TO CONFIRMATION OF PLAN BY ARVEST CENTRAL MORTGAGE COMPANY
7-22-19 [19]

Tentative Ruling

The objection 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). 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 Arvest Central Mortgage Company's objection, the Debtor filed an amended plan on August 12, 2019. The confirmation hearing for the amended plan is scheduled for October 1, 2019. The earlier plan filed June 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9.	17-20214-B-13 JPJ-1	CHRISTOPHER/MARTA HEARTY Mikalah R. Liviakis	MOTION TO MODIFY PLAN 6-28-19 [41]

No Ruling

10. 19-23222-B-13 DAVID CARTER
JPJ-1 Mark Shmorgon

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [13]

Tentative Ruling

Introduction

There are four related objections to the confirmation of Chapter 13 plans before the court. Each objection is filed by the Chapter 13 Trustee ("Trustee"). The Trustee's objections are filed in: (1) *In re David Carter*, case no. 19-23222; (2) In re *Lucia Salas*, case no. 19-23827; (3) *In re Steven Slater*, case no. 19-23355; and (4) *In re Gary Vitalie*, case no. 19-23098. Attorney Mark Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases. Attorney Richard Kwun represents the debtor in the *Slater* case.

The objections are the same in each case. The Trustee objects to confirmation to the extent each proposed plan pays attorney's fees through the plan. The Trustee asserts it is less than clear who the attorney of record in each case is. The Trustee has also expressed concerns regarding irregularities in the employment and compensation of the respective debtors' attorneys. More precisely, the Trustee contends that the debtors appear to be represented by different pre-petition and post-petition attorneys and the *Rights and Responsibilities of Chapter 13 Debtors*, Federal Bankruptcy Rules, and the Local Bankruptcy Rules do not permit payment of what is commonly known as the "no-look" Chapter 13 attorney's fee to one attorney or firm for pre-petition work with the balance of the same "no-look" fee paid to another attorney or firm for post-petition work.

The named attorneys filed initial responses in the *Carter*, *Slater*, and *Vitalie* cases. Those responses denied the Trustee's allegations and requested additional time to file more detailed responses. The court granted the requests. The court permitted the named attorneys to file additional responses by July 30, 2019, which they did.[1] The Trustee was also permitted to file a reply to the additional responses by August 6, 2019, which he did.

The court has reviewed the Trustee's objections, the named attorneys' initial and additional responses, the Trustee's replies, and all related declarations and exhibits. The court also takes judicial notice of the dockets in each of the cases identified above. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bank. P. 7052.

For the reasons explained below, the Trustee's objections will be sustained and confirmation of all plans denied without prejudice.

Background

Allen Chern LLP ("Chern Law") is the previous name of Deigham Law LLP, an Illinois limited liability partnership. Chern Law is based in Chicago, Illinois. It is registered to do business in California. It is also registered as a law firm with the California State Bar. Chern Law is purportedly in the process of registering its current name with the California Secretary of State.

The debtors in each of the cases identified above paid Chern Law for pre-petition

[1] Although Mr. Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases and Mr. Kwun represents the debtor in *Slater* case the additional responses filed in all cases are nearly identical. They are also identical to the only response filed in the *Salas* case. Each response is also supported by an identical declaration.

services that Chern Law provided the debtors. The debtor in the *Carter* case paid Chern Law $2,250.00. The debtor in the *Salas* case paid Chern Law $2,250.00. The debtor in the *Slater* case paid Chern Law $2,175.00. And the debtor in the *Vitalie* case paid Chern Law $1,725.00.

In the cases identified above the named attorney have elected to receive the $4,000.00 "no-look" fee permitted by Local Bankruptcy Rule 2016-1(c) as compensation for services provided each debtor. The plans filed in each of the identified cases propose to pay the named attorneys a post-petition balance of the $4,000.00 "no-look" fee that was not paid to Chern Law pre-petition. The plan in the *Carter* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Salas* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Slater* case proposes to pay Mr. Kwun a balance of $1,825.00. And the plan in the *Vitalie* case proposes to pay Mr. Shmorgon a balance of $2,275.00.

Discussion

Whoever prepared the nearly-identical responses to the Trustee's objections failed to consider the Local Bankruptcy Rules. All responses essentially make two arguments: (1) fee sharing outside the context of a single law firm is not prohibited; and (2) in any case, there is no fee sharing outside the same law firm because the named attorneys are partners of Chern Law.[2] Fortunately, the court need not wade into the murky waters of permissible fee-sharing or state law firm partnership law because the Trustee's objections are easily resolved under the Local Bankruptcy Rules.

The court initially notes that the Trustee's objection is not an attempt by the Trustee to prevent the named attorneys from being paid attorney's fees for representing their clients as debtors in their respective Chapter 13 cases. Rather, the Trustee seeks only to permissibly alter the manner in which the named attorneys are paid. And it is in that respect that the Trustee's objections are entirely consistent with the Bankruptcy Code and the Federal and Local Bankruptcy Rules.

In addition to the Bankruptcy Code and the Federal Rules, compensation of attorneys representing debtors in Chapter 13 cases filed in the Eastern District of California is governed by Local Bankruptcy Rule 2016-1. Local Bankruptcy Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Bankruptcy Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Bankruptcy Rule 2016-1(c).]" (Emphasis added).

Local Bankruptcy Rule 2016-1(c) provides for what is commonly known as a $4,000.00 "no-look" fee in non-business Chapter 13 cases such as the cases identified above.[3] Payment of the $4,000.00 "no-look" fee (i) requires the attorney to comply with a few conditions listed in Local Bankruptcy Rule 2016-1(c);[4] and also (ii) is premised on the absence of an objection. *See* Local Bankr. R. 2016-1(a).

The named attorney did not "opt-out" of compliance with Local Bankruptcy Rule 2016-1(c). In fact, they filed a *Rights and Responsibilities* in each case in which they elected to receive the $4,000.00 "no-look" fee as compensation for their pre- and post-petition services to the respective debtors. What then is the effect of the Trustee's objection? The answer to that question is found Local Bankruptcy Rule 2016-1(a):

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[2]The declarations filed in support of each response state that the named attorneys hold and equity interest in Chern Law.

[3]The amount is $6,000.00 in Chapter 13 business cases.

[4]Those conditions include limiting the fee to $4,000.00 in nonbusiness cases, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Bankr. R. 2016-1(c)(1)-(4).

"When there is an objection [to the "no-look" fee under Local Bankruptcy Rule 2016-1(c)]. . ., compensation **shall** be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added).

In this court's view, an objection to the "no-look" fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) when an exemption is claimed on Schedule C it is deemed allowed unless somebody objects. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, must demonstrate that the exemption is properly claimed and should be allowed.[5] *Id.* Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a). The point here is that an objection can effectively allocate a burden of demonstrating that relief is warranted to the place were it lies under applicable law.

In the Eastern District of California the "no-look" fee is presumed to be fair and reasonable pre- and post-petition compensation for attorneys representing debtors in Chapter 13 cases. *See* Local Bankr. R. 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). An objection to the "no-look" fee overcomes that presumptive fairness and reasonableness and places the burden of demonstrating both where it lies under applicable law. And in the case of attorney's fees, here, that is with Chern Law and the named defendants as the fee claimant(s). *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Hence the mandate of Local Bankruptcy Rule 2016-1(a), *i.e.*, when an objection is filed compensation **shall** be determined under §§ 329 and 330.

Turning now to the Trustee's objections filed in the cases identified above. Chern Law and the named attorneys seek payment of the $4,000.00 "no-look" fee through the respective debtors' plans as their fair and reasonable compensation for all pre- and post-petition services. The Trustee objected. That objection means the $4,000.00 "no-look" fee is no longer presumed to be fair and reasonable compensation for representing the debtors in their Chapter 13 cases and the burden is on Chern Law and the named attorneys to demonstrate that it is. That also means several additional things:

(1) it means that Chern Law and the named attorneys must now file, set, and serve appropriate fee motions supported by time and task records sufficient to allow the court to determine fairness and reasonableness under §§ 329 and 330, and the applicable Federal and Local Bankruptcy Rules;

(2) it also means that no fees have been approved or allowed and therefore no fees may be paid;

(3) it also means that since no fees have been approved or allowed and therefore may not be paid, any fees that have been paid may not be applied and instead shall be held in a client trust account pending further order of the court;

(4) it also means that by August 27, 2019, Chern Law and the named attorneys shall file proof that any funds received from the respective debtors are held in a client trust account and the failure to do so will be deemed an act of contempt;

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[5] In states where exemptions are created by, and in most cases limited to, state law and where state law allocates the burden of proof to the exemption claimant, as California does, the debtor as the exemption claimant has the burden of proving an exemption is properly claimed and therefore should be allowed notwithstanding Bankruptcy Rule 4003(c) which places the burden of proving an exemption is not properly claimed on the objecting party. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-337 (9th Cir. BAP 2016); *see also Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

(5) it also means that since no fees have been approved and allowed and therefore may not be paid no fees may be paid through any of the plans proposed in the cases identified above;

(6) and it means that the Trustee's objections to confirmation of the plans filed in the cases identified above, to the extent those plans propose to pay fees through the plan, are sustained and confirmation of each plan is denied without prejudice.

Conclusion

For all the foregoing reasons, the Trustee's objections to confirmation of the Chapter 13 plans filed in the *Carter*, *Salas*, *Slater*, and *Vitalie* cases are sustained and confirmation of the plans filed in each of those cases is denied without prejudice.

The court will enter a minute order.

11. 19-23422-B-13 DANIEL ALTSTATT
Pro Se

MOTION TO CONFIRM PLAN
6-27-19 [22]

Tentative Ruling

The motion been set for hearing on the 35-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)(B) 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. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, an amended plan was filed on August 6, 2019. The confirmation hearing for the amended plan is scheduled for September 17, 2019. The earlier plan filed June 27, 2019, is not confirmed.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. 19-21224-B-13 MARLYN GERRINGER
MMM-1 Mohammad M. Mokarram

MOTION TO APPROVE LOAN MODIFICATION
7-21-19 [16]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Debtor seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $2,656.06 a month to $2,616.49 a month. The modification is for a term of 210 months, has an interest rate of 5.00%, and the modified principal balance will be $428,777.57.

The motion is supported by the Declaration of Marlyn Gerringer. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. 19-23827-B-13 LUCIA SALAS
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [15]

Tentative Ruling

Introduction

There are four related objections to the confirmation of Chapter 13 plans before the court. Each objection is filed by the Chapter 13 Trustee ("Trustee"). The Trustee's objections are filed in: (1) *In re David Carter*, case no. 19-23222; (2) In re *Lucia Salas*, case no. 19-23827; (3) *In re Steven Slater*, case no. 19-23355; and (4) *In re Gary Vitalie*, case no. 19-23098. Attorney Mark Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases. Attorney Richard Kwun represents the debtor in the *Slater* case.

The objections are the same in each case. The Trustee objects to confirmation to the extent each proposed plan pays attorney's fees through the plan. The Trustee asserts it is less than clear who the attorney of record in each case is. The Trustee has also expressed concerns regarding irregularities in the employment and compensation of the respective debtors' attorneys. More precisely, the Trustee contends that the debtors appear to be represented by different pre-petition and post-petition attorneys and the *Rights and Responsibilities of Chapter 13 Debtors*, Federal Bankruptcy Rules, and the Local Bankruptcy Rules do not permit payment of what is commonly known as the "no-look" Chapter 13 attorney's fee to one attorney or firm for pre-petition work with the balance of the same "no-look" fee paid to another attorney or firm for post-petition work.

The named attorneys filed initial responses in the *Carter*, *Slater*, and *Vitalie* cases. Those responses denied the Trustee's allegations and requested additional time to file more detailed responses. The court granted the requests. The court permitted the named attorneys to file additional responses by July 30, 2019, which they did.[1] The Trustee was also permitted to file a reply to the additional responses by August 6, 2019, which he did.

The court has reviewed the Trustee's objections, the named attorneys' initial and additional responses, the Trustee's replies, and all related declarations and exhibits. The court also takes judicial notice of the dockets in each of the cases identified above. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bank. P. 7052.

For the reasons explained below, the Trustee's objections will be sustained and confirmation of all plans denied without prejudice.

Background

Allen Chern LLP ("Chern Law") is the previous name of Deigham Law LLP, an Illinois limited liability partnership. Chern Law is based in Chicago, Illinois. It is registered to do business in California. It is also registered as a law firm with the California State Bar. Chern Law is purportedly in the process of registering its current name with the California Secretary of State.

The debtors in each of the cases identified above paid Chern Law for pre-petition services that Chern Law provided the debtors. The debtor in the *Carter* case paid Chern Law $2,250.00. The debtor in the *Salas* case paid Chern Law $2,250.00. The debtor in

[1] Although Mr. Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases and Mr. Kwun represents the debtor in *Slater* case the additional responses filed in all cases are nearly identical. They are also identical to the only response filed in the *Salas* case. Each response is also supported by an identical declaration.

the *Slater* case paid Chern Law $2,175.00. And the debtor in the *Vitalie* case paid Chern Law $1,725.00.

In the cases identified above the named attorney have elected to receive the $4,000.00 "no-look" fee permitted by Local Bankruptcy Rule 2016-1(c) as compensation for services provided each debtor. The plans filed in each of the identified cases propose to pay the named attorneys a post-petition balance of the $4,000.00 "no-look" fee that was not paid to Chern Law pre-petition. The plan in the *Carter* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Salas* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Slater* case proposes to pay Mr. Kwun a balance of $1,825.00. And the plan in the *Vitalie* case proposes to pay Mr. Shmorgon a balance of $2,275.00.

Discussion

Whoever prepared the nearly-identical responses to the Trustee's objections failed to consider the Local Bankruptcy Rules. All responses essentially make two arguments: (1) fee sharing outside the context of a single law firm is not prohibited; and (2) in any case, there is no fee sharing outside the same law firm because the named attorneys are partners of Chern Law.[2] Fortunately, the court need not wade into the murky waters of permissible fee-sharing or state law firm partnership law because the Trustee's objections are easily resolved under the Local Bankruptcy Rules.

The court initially notes that the Trustee's objection is not an attempt by the Trustee to prevent the named attorneys from being paid attorney's fees for representing their clients as debtors in their respective Chapter 13 cases. Rather, the Trustee seeks only to permissibly alter the manner in which the named attorneys are paid. And it is in that respect that the Trustee's objections are entirely consistent with the Bankruptcy Code and the Federal and Local Bankruptcy Rules.

In addition to the Bankruptcy Code and the Federal Rules, compensation of attorneys representing debtors in Chapter 13 cases filed in the Eastern District of California is governed by Local Bankruptcy Rule 2016-1. Local Bankruptcy Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Bankruptcy Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Bankruptcy Rule 2016-1(c).]" (Emphasis added).

Local Bankruptcy Rule 2016-1(c) provides for what is commonly known as a $4,000.00 "no-look" fee in non-business Chapter 13 cases such as the cases identified above.[3] Payment of the $4,000.00 "no-look" fee (i) requires the attorney to comply with a few conditions listed in Local Bankruptcy Rule 2016-1(c);[4] and also (ii) is premised on the absence of an objection. *See* Local Bankr. R. 2016-1(a).

The named attorney did not "opt-out" of compliance with Local Bankruptcy Rule 2016-1(c). In fact, they filed a *Rights and Responsibilities* in each case in which they elected to receive the $4,000.00 "no-look" fee as compensation for their pre- and post-petition services to the respective debtors. What then is the effect of the Trustee's objection? The answer to that question is found Local Bankruptcy Rule 2016-1(a): "When there is an objection [to the "no-look" fee under Local Bankruptcy Rule 2016-1(c)]. . ., compensation **shall** be determined in accordance with 11 U.S.C. §§ 329 and

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[2]The declarations filed in support of each response state that the named attorneys hold and equity interest in Chern Law.

[3]The amount is $6,000.00 in Chapter 13 business cases.

[4]Those conditions include limiting the fee to $4,000.00 in nonbusiness cases, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Bankr. R. 2016-1(c)(1)-(4).

330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added).

In this court's view, an objection to the "no-look" fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) when an exemption is claimed on Schedule C it is deemed allowed unless somebody objects. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, must demonstrate that the exemption is properly claimed and should be allowed.[5] *Id.* Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a). The point here is that an objection can effectively allocate a burden of demonstrating that relief is warranted to the place were it lies under applicable law.

In the Eastern District of California the "no-look" fee is presumed to be fair and reasonable pre- and post-petition compensation for attorneys representing debtors in Chapter 13 cases. *See* Local Bankr. R. 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). An objection to the "no-look" fee overcomes that presumptive fairness and reasonableness and places the burden of demonstrating both where it lies under applicable law. And in the case of attorney's fees, here, that is with Chern Law and the named defendants as the fee claimant(s). *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Hence the mandate of Local Bankruptcy Rule 2016-1(a), *i.e.*, when an objection is filed compensation **shall** be determined under §§ 329 and 330.

Turning now to the Trustee's objections filed in the cases identified above. Chern Law and the named attorneys seek payment of the $4,000.00 "no-look" fee through the respective debtors' plans as their fair and reasonable compensation for all pre- and post-petition services. The Trustee objected. That objection means the $4,000.00 "no-look" fee is no longer presumed to be fair and reasonable compensation for representing the debtors in their Chapter 13 cases and the burden is on Chern Law and the named attorneys to demonstrate that it is. That also means several additional things:

(1) it means that Chern Law and the named attorneys must now file, set, and serve appropriate fee motions supported by time and task records sufficient to allow the court to determine fairness and reasonableness under §§ 329 and 330, and the applicable Federal and Local Bankruptcy Rules;

(2) it also means that no fees have been approved or allowed and therefore no fees may be paid;

(3) it also means that since no fees have been approved or allowed and therefore may not be paid, any fees that have been paid may not be applied and instead shall be held in a client trust account pending further order of the court;

(4) it also means that by August 27, 2019, Chern Law and the named attorneys shall file proof that any funds received from the respective debtors are held in a client trust account and the failure to do so will be deemed an act of contempt;

(5) it also means that since no fees have been approved and allowed and therefore may

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[5] In states where exemptions are created by, and in most cases limited to, state law and where state law allocates the burden of proof to the exemption claimant, as California does, the debtor as the exemption claimant has the burden of proving an exemption is properly claimed and therefore should be allowed notwithstanding Bankruptcy Rule 4003(c) which places the burden of proving an exemption is not properly claimed on the objecting party. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-337 (9th Cir. BAP 2016); *see also Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

not be paid no fees may be paid through any of the plans proposed in the cases identified above;

(6) and it means that the Trustee's objections to confirmation of the plans filed in the cases identified above, to the extent those plans propose to pay fees through the plan, are sustained and confirmation of each plan is denied without prejudice.

Conclusion

For all the foregoing reasons, the Trustee's objections to confirmation of the Chapter 13 plans filed in the *Carter*, *Salas*, *Slater*, and *Vitalie* cases are sustained and confirmation of the plans filed in each of those cases is denied without prejudice.

The court will enter a minute order.

14. 18-27132-B-13 STUART KOPPLE — ORDER TO SHOW CAUSE
Pro Se — 8-8-19 [130]

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to confirm a plan over a span of 10 months, which is unreasonable delay that is prejudicial to creditors under § 1307(c)(1). This case was filed on November 13, 2018, and no plan has been confirmed.

At the July 2, 2019, hearing, the Debtor did not appear and the court granted Debtor's written request to continue the Motion to Confirm Third [sic] Amended Plan to August 6, 2019, in order for the Debtor to file a fourth amended plan. The court also stated that no additional continuances shall be permitted on this motion. Dkt. 116. In other words, the court permitted the Debtor to file a fourth amended plan and would not further continue hearing a confirmation motion of the third amended plan (which was filed on May 3, 2019) beyond the August 6, 2019, hearing date. This did not mean that the Debtor was required to hear and confirm a fourth amended plan on August 6, 2019.

Debtor filed his Motion to Confirm Fourth [sic] Amended Plan on July 15, 2019, and set it to be heard on August 6, 2019. By setting it on this calendar date, the Debtor provided only 22 days' notice instead of the required 35 days' notice pursuant to Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Thus, the court denied confirmation of the fourth amended plan and entered an order to show cause why the case should not be dismissed.

Debtor filed his response to the order to show cause on August 12, 2019. Dkt. 133. Debtor states that the objections to confirmation raised by Chapter 13 Trustee Jan Johnson have been resolved and that many of the objections relating to miscalculation of payments or misfilings were due to the transfer of Debtor's case from Chapter 13 Trustee David Cusick. Debtor also states that he had no chance to confirm the fourth amended plan by August 6, 2019, but the Debtor is mistaken that it had to be confirmed by this date as stated above.

Given that Debtor is filing pro se and was attending to his brother's health matters, the court will discharge the order to show cause and the case shall remain pending. The Debtor will be given a **final** opportunity to confirm a plan within 60 days. If the Debtor is unable to do so, 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 60 days, the case **will be dismissed** on the Trustee's ex parte application.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

15. 19-23633-B-13 JHW-1 **Thru #16**

ROBERTO/TRACI TREVIZO
Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC.
7-12-19 [20]

WITHDRAWN BY M.P.

Final Ruling

Santander Consumer USA Inc. ("Creditor") having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Furthermore, the Debtors filed a response stating that they are filing an amended plan that will address the issue raised by Creditor.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. 19-23633-B-13 JPJ-1

ROBERTO/TRACI TREVIZO
Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-1-19 [34]

Tentative Ruling

The objection 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). 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 Debtors filed an amended plan on July 23, 2019. The confirmation hearing for the amended plan is scheduled for September 3, 2019. The earlier plan filed June 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. 19-22234-B-13 BRADLEY NYDEGGER MOTION TO CONFIRM PLAN
GEL-1 Gabriel E. Liberman 7-16-19 [24]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

18. 19-23837-B-13 KIMBERLY BORDEN
JPJ-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [17]

Tentative Ruling

The objection and motion were 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). 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 $200.00, which represents approximately 1 plan payment. An additional payment of $200.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's disposable income is not being applied to make payments to unsecured creditors. The Debtor's monthly disposable income is $217.00 based on Form 122C-2 and the Debtor must pay no less than $13,020.00 to unsecured nonpriority creditor. The plan pays only $4,171.14 to unsecured nonpriority creditors.

The plan filed July 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19. 14-26940-B-13 SCOTT/LANAE FRANK — MOTION TO MODIFY PLAN
JSO-3 Jeffrey S. Ogilvie — 7-16-19 [54]

Final Ruling

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

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

20. 15-24940-B-13 GARY/DENISE HIGHFILL MOTION TO SELL
JSO-1 Jeffrey S. Ogilvie 8-6-19 [21]

Tentative Ruling

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 9709 Tenaya Way, Kelseyville, California ("Property").

The Debtors believe that the Property, consisting of an empty lot, is valued at $14,549.00 as shown on an example listing. Dkt. 24, exh. D. There is no mention as to whether Debtors have a proposed buyer. The exhibits filed do not include any purchase agreement.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

21. 18-24743-B-13 TIMOTHY/LARISA THOMPSON MOTION TO INCUR DEBT
MS-1 Mark Shmorgon 7-30-19 [31]

Tentative Ruling

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

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

Debtors seek court approval to incur post-petition credit. Evoque Lending ("Creditor") has agreed to refinance Debtors' primary residence, which is currently provided in Class 4 of the plan. The refinance increases Debtors' payment from the current $1,962.17 a month to $2,339.95 a month. The modification is for a term of 360 months, has an interest rate of 4.00%, and the modified principal balance will be $353,072.00.

The motion is supported by the Declaration of Marlyn Gerringer. The Declaration affirms the Debtor's desire to obtain the post-petition financing. The Declaration states that "[w]hile the new proposed mortgage payment is higher than [Debtors'] current mortgage payment, by no longer having a plan payment, the debtors will have a net savings each month." Dkt. 31, p. 3, para. 9.

The Debtors do not explain what their net savings per month will be considering that the new mortgage payment increases by nearly $400 per month. The Debtors also state that they no longer will have a plan payment but the claim against Debtors' primary residence was provided for in Class 4 of the plan, thus it was never paid through the plan but rather directly from the Debtors to the creditor.

The court finds that the motion does not comply with the provisions of 11 U.S.C. § 364(d). The motion is therefore denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. 17-27747-B-13 RONALD WITSCHI, JR.
MJ-1 Lewis Phon

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-19 [81]

WILMINGTON SAVINGS FUND SOCIETY VS.
DEBTOR DISMISSED
06/21/2019

Final Ruling

The case having been dismissed on June 21, 2019, the motion for relief from automatic stay is denied as moot.

The court will enter a minute order.

23. 18-20748-B-13 KAREN BLAKLEY
MJD-3 Matthew J. DeCaminada
Thru #24

MOTION TO MODIFY PLAN
7-11-19 [59]

Final Ruling

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

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

24. 18-20748-B-13 KAREN BLAKLEY
MJD-4 Matthew J. DeCaminada

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTORS ATTORNEY(S)
7-12-19 [65]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Request for Additional Fees and Costs

As part of confirmation of the Debtor Chapter 13 plan, Matthew DeCaminada ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). Applicant substituted into this case on March 5, 2019. The Debtor was formerly represented by attorney Scott J. Sagaria. The

court authorized payment of fees and costs totaling $4,000.00 to Mr. Sagaria. Dkt. 24. Applicant has been paid $0.00 in attorneys fees and costs. Applicant now seeks compensation in the amount of $500.00 in fees and costs. This is a reduction from $1,792.50 in services rendered.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 69.

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).

Applicant asserts that is provided additional services to the Debtor in connection with this Chapter 13 case including, but not limited to, general correspondences, emails, telephone calls, file reviews, prepare and filing of substitution of attorney, motion to confirm a modified plan, and the instant fee application. 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	$500.00
Additional Costs and Expenses	$ 0.00

The motion is ORDERED GRANTED for fees of $500.00 and costs and expenses of $0.00.

The court will enter a minute order.

25. 19-23948-B-13 C TODD SMITH/SANDRA SMITH — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Candace Y. Brooks — 7-31-19 [18]

Tentative Ruling

The objection and motion were 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). 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.

Feasibility depends on the granting of motions to avoid lien held by Platinum Rapid Funding (Schedule D, creditor 2.3) and Platinum Rapid Funding (Schedule D, creditor 2.4). To date, the Debtor has failed to file, set for hearing, and serve on the respondent creditor and Trustee a motion to avoid lien pursuant to Local Bankr. R. 3015-1(I).

The plan filed June 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26.	19-23049-B-13 JPJ-1	CHRISTOPHER KELSO Harry D. Roth	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 6-27-19 [17]

Tentative Ruling

This matter was continued from July 30, 2019, to be heard after the continued meeting of creditors set for August 15, 2019. The meeting was concluded as to the Debtor. The Trustee's objection was originally 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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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

Second, the plan payments in the amount of $100.00 (month 1) and $1,000.00 (month 2) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan. The aggregate of these monthly amounts plus the Trustee's fee is $1,938.97. The plan does not comply with Section 5.02(a) of the mandatory form plan.

The plan filed May 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

27. 16-23151-B-13 HEATHER MOURAL MOTION TO INCUR DEBT
GEL-1 Gabriel E. Liberman 7-23-19 [28]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase real property commonly known as 823 Carolina Avenue, Yuba City, California. Debtor seeks to finance no more than $274,339.00 with monthly payments of $1,886.76 at an interest rate of no more than 4.0% for a term of no more than 30 years. Debtor currently rents and states that her rent has been steadily increasing from approximately $1,100.00 to $1,700.00 per month. Additionally, Debtor's landlord advised her that he will be selling the house she resides in, resulting in Debtor needing to look for other living arrangements. Debtor states that the rent in the Yuba City area where she resides will be equivalent to the mortgage payment she is seeking to incur.

The Declaration of Heather Moural is provided in support of the motion. The Declaration states that her net income has increased since she is no longer making vehicle lease payments. The Debtor states that she can make the mortgage payment with no adverse effect to her current plan payments no any adjustment to the current divided of 55% paid to general unsecured creditors. A down payment of $8,129.00 will be gifted by Debtor's father and a pre-paid mortgage insurance in the amount of $4,010 will be provided toward the estimated class to close escrow.

Discussion

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

28. 19-23051-B-13 MARY CHADWICK
SLE-2 Steele Lanphier

MOTION TO CONFIRM PLAN
6-11-19 [20]

No Ruling

29. 19-23852-B-13 SVETLANA TISKIY
AP-1
Thru #30
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB
8-5-19 [29]

Tentative Ruling

The objection 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). 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 Wilmington Saving's Fund Society, FSB's objection, the Debtor filed an amended plan on August 15, 2019. The confirmation hearing for the amended plan has not been set however. Nonetheless, the earlier plan filed July 1, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

30. 19-23852-B-13 SVETLANA TISKIY
JPJ-1
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [20]

Tentative Ruling

The objection and motion were 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). 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 and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on August 15, 2019. The confirmation hearing for the amended plan has not been set however. Nonetheless, the earlier plan filed July 1, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

31. 19-23553-B-13 LWA-1 — SHAWN/HEATHER WHITNEY — John G. Downing — MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 — 7-18-19 [20]

WITHDRAWN BY M.P.

Final Ruling

GBS 1401 South Virigina, LLC ("Creditor") having filed a notice of withdrawal of its motion, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

32. 19-23355-B-13 JPJ-1 — STEVEN SLATER, Richard Kwun — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 6-27-19 [13]

Tentative Ruling

Introduction

There are four related objections to the confirmation of Chapter 13 plans before the court. Each objection is filed by the Chapter 13 Trustee ("Trustee"). The Trustee's objections are filed in: (1) *In re David Carter*, case no. 19-23222; (2) In re *Lucia Salas*, case no. 19-23827; (3) *In re Steven Slater*, case no. 19-23355; and (4) *In re Gary Vitalie*, case no. 19-23098. Attorney Mark Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases. Attorney Richard Kwun represents the debtor in the *Slater* case.

The objections are the same in each case. The Trustee objects to confirmation to the extent each proposed plan pays attorney's fees through the plan. The Trustee asserts it is less than clear who the attorney of record in each case is. The Trustee has also expressed concerns regarding irregularities in the employment and compensation of the respective debtors' attorneys. More precisely, the Trustee contends that the debtors appear to be represented by different pre-petition and post-petition attorneys and the *Rights and Responsibilities of Chapter 13 Debtors*, Federal Bankruptcy Rules, and the Local Bankruptcy Rules do not permit payment of what is commonly known as the "no-look" Chapter 13 attorney's fee to one attorney or firm for pre-petition work with the balance of the same "no-look" fee paid to another attorney or firm for post-petition work.

The named attorneys filed initial responses in the *Carter*, *Slater*, and *Vitalie* cases. Those responses denied the Trustee's allegations and requested additional time to file more detailed responses. The court granted the requests. The court permitted the named attorneys to file additional responses by July 30, 2019, which they did.[1] The Trustee was also permitted to file a reply to the additional responses by August 6, 2019, which he did.

The court has reviewed the Trustee's objections, the named attorneys' initial and additional responses, the Trustee's replies, and all related declarations and exhibits. The court also takes judicial notice of the dockets in each of the cases identified above. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bank. P. 7052.

For the reasons explained below, the Trustee's objections will be sustained and confirmation of all plans denied without prejudice.

Background

Allen Chern LLP ("Chern Law") is the previous name of Deigham Law LLP, an Illinois limited liability partnership. Chern Law is based in Chicago, Illinois. It is registered to do business in California. It is also registered as a law firm with the California State Bar. Chern Law is purportedly in the process of registering its current name with the California Secretary of State.

The debtors in each of the cases identified above paid Chern Law for pre-petition services that Chern Law provided the debtors. The debtor in the *Carter* case paid Chern

[1] Although Mr. Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases and Mr. Kwun represents the debtor in *Slater* case the additional responses filed in all cases are nearly identical. They are also identical to the only response filed in the *Salas* case. Each response is also supported by an identical declaration.

Law $2,250.00. The debtor in the *Salas* case paid Chern Law $2,250.00. The debtor in the *Slater* case paid Chern Law $2,175.00. And the debtor in the *Vitalie* case paid Chern Law $1,725.00.

In the cases identified above the named attorney have elected to receive the $4,000.00 "no-look" fee permitted by Local Bankruptcy Rule 2016-1(c) as compensation for services provided each debtor. The plans filed in each of the identified cases propose to pay the named attorneys a post-petition balance of the $4,000.00 "no-look" fee that was not paid to Chern Law pre-petition. The plan in the *Carter* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Salas* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Slater* case proposes to pay Mr. Kwun a balance of $1,825.00. And the plan in the *Vitalie* case proposes to pay Mr. Shmorgon a balance of $2,275.00.

Discussion

Whoever prepared the nearly-identical responses to the Trustee's objections failed to consider the Local Bankruptcy Rules. All responses essentially make two arguments: (1) fee sharing outside the context of a single law firm is not prohibited; and (2) in any case, there is no fee sharing outside the same law firm because the named attorneys are partners of Chern Law.[2] Fortunately, the court need not wade into the murky waters of permissible fee-sharing or state law firm partnership law because the Trustee's objections are easily resolved under the Local Bankruptcy Rules.

The court initially notes that the Trustee's objection is not an attempt by the Trustee to prevent the named attorneys from being paid attorney's fees for representing their clients as debtors in their respective Chapter 13 cases. Rather, the Trustee seeks only to permissibly alter the manner in which the named attorneys are paid. And it is in that respect that the Trustee's objections are entirely consistent with the Bankruptcy Code and the Federal and Local Bankruptcy Rules.

In addition to the Bankruptcy Code and the Federal Rules, compensation of attorneys representing debtors in Chapter 13 cases filed in the Eastern District of California is governed by Local Bankruptcy Rule 2016-1. Local Bankruptcy Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Bankruptcy Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Bankruptcy Rule 2016-1(c).]" (Emphasis added).

Local Bankruptcy Rule 2016-1(c) provides for what is commonly known as a $4,000.00 "no-look" fee in non-business Chapter 13 cases such as the cases identified above.[3] Payment of the $4,000.00 "no-look" fee (i) requires the attorney to comply with a few conditions listed in Local Bankruptcy Rule 2016-1(c);[4] and also (ii) is premised on the absence of an objection. *See* Local Bankr. R. 2016-1(a).

The named attorney did not "opt-out" of compliance with Local Bankruptcy Rule 2016-1(c). In fact, they filed a *Rights and Responsibilities* in each case in which they elected to receive the $4,000.00 "no-look" fee as compensation for their pre- and post-petition services to the respective debtors. What then is the effect of the Trustee's objection? The answer to that question is found Local Bankruptcy Rule 2016-1(a): "When there is an objection [to the "no-look" fee under Local Bankruptcy Rule 2016-

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[2]The declarations filed in support of each response state that the named attorneys hold and equity interest in Chern Law.

[3]The amount is $6,000.00 in Chapter 13 business cases.

[4]Those conditions include limiting the fee to $4,000.00 in nonbusiness cases, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Bankr. R. 2016-1(c)(1)-(4).

1(c)]. . ., compensation **shall** be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added).

In this court's view, an objection to the "no-look" fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) when an exemption is claimed on Schedule C it is deemed allowed unless somebody objects. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, must demonstrate that the exemption is properly claimed and should be allowed.[5] *Id.* Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a). The point here is that an objection can effectively allocate a burden of demonstrating that relief is warranted to the place were it lies under applicable law.

In the Eastern District of California the "no-look" fee is presumed to be fair and reasonable pre- and post-petition compensation for attorneys representing debtors in Chapter 13 cases. *See* Local Bankr. R. 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). An objection to the "no-look" fee overcomes that presumptive fairness and reasonableness and places the burden of demonstrating both where it lies under applicable law. And in the case of attorney's fees, here, that is with Chern Law and the named defendants as the fee claimant(s). *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Hence the mandate of Local Bankruptcy Rule 2016-1(a), *i.e.*, when an objection is filed compensation **shall** be determined under §§ 329 and 330.

Turning now to the Trustee's objections filed in the cases identified above. Chern Law and the named attorneys seek payment of the $4,000.00 "no-look" fee through the respective debtors' plans as their fair and reasonable compensation for all pre- and post-petition services. The Trustee objected. That objection means the $4,000.00 "no-look" fee is no longer presumed to be fair and reasonable compensation for representing the debtors in their Chapter 13 cases and the burden is on Chern Law and the named attorneys to demonstrate that it is. That also means several additional things:

(1) it means that Chern Law and the named attorneys must now file, set, and serve appropriate fee motions supported by time and task records sufficient to allow the court to determine fairness and reasonableness under §§ 329 and 330, and the applicable Federal and Local Bankruptcy Rules;

(2) it also means that no fees have been approved or allowed and therefore no fees may be paid;

(3) it also means that since no fees have been approved or allowed and therefore may not be paid, any fees that have been paid may not be applied and instead shall be held in a client trust account pending further order of the court;

(4) it also means that by August 27, 2019, Chern Law and the named attorneys shall file proof that any funds received from the respective debtors are held in a client trust account and the failure to do so will be deemed an act of contempt;

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[5] In states where exemptions are created by, and in most cases limited to, state law and where state law allocates the burden of proof to the exemption claimant, as California does, the debtor as the exemption claimant has the burden of proving an exemption is properly claimed and therefore should be allowed notwithstanding Bankruptcy Rule 4003(c) which places the burden of proving an exemption is not properly claimed on the objecting party. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-337 (9th Cir. BAP 2016); *see also Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

(5) it also means that since no fees have been approved and allowed and therefore may not be paid no fees may be paid through any of the plans proposed in the cases identified above;

(6) and it means that the Trustee's objections to confirmation of the plans filed in the cases identified above, to the extent those plans propose to pay fees through the plan, are sustained and confirmation of each plan is denied without prejudice.

Conclusion

For all the foregoing reasons, the Trustee's objections to confirmation of the Chapter 13 plans filed in the *Carter*, *Salas*, *Slater*, and *Vitalie* cases are sustained and confirmation of the plans filed in each of those cases is denied without prejudice.

The court will enter a minute order.

33. 18-26857-B-13 JAMES/DONNA CHISHOLM MOTION TO SELL
MMM-1 Mohammad M. Mokarram 7-29-19 [25]

Tentative Ruling

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 9909 Dove Shell, Elk Grove, California ("Property").

Proposed purchasers Kevin Borton and Faye Borton have agreed to purchase the Property for $479,000.00. The Property is secured by a deed of trust and note in favor of Freedom Mortgage Corporation in the amount of $200,377.29. Debtor should receive approximately $254,776.00 in net sales proceeds after paying all liens, closing costs, and realtor fees. Based on a review of the claims filed for Debtor's case, 100% of creditors will receive disbursements, after the $175,000.00 exemption is paid to the Debtor.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

34. 19-20857-B-13 JOHN STANTON
PSB-2 Pauldeep Bains

MOTION TO MODIFY PLAN
7-10-19 [45]

Final Ruling

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

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

35. 19-20957-B-13 BRIAN HAMILTON
Pro Se

OBJECTION TO CLAIM OF STATE OF CALIFORNIA FRANCHISE TAX BOARD, CLAIM NUMBER 2
7-29-19 [33]

Final Ruling

The objection to proof of claim was not set for hearing at the minimum 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). Only 22 days' notice was given. Therefore, the objection to is overruled without prejudice.

The court will enter a minute order.

36. 19-21257-B-13 SOLEDAD/BRIAN ASH MOTION TO MODIFY PLAN
PSB-1 Pauldeep Bains 7-15-19 [29]

Final Ruling

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

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

37. 19-23457-B-7 RAYMOND SAHADEO
JPJ-2 W. Steven Shumway

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-15-19 [40]

CONVERTED TO CH 7

Final Ruling

The case having been converted to Chapter 7 on August 6, 2019, the objection to Debtor's claim of exemptions is overruled as moot.

The court will enter a minute order.

38. 19-23758-B-13 MICHAEL PETROW
JPJ-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [17]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) 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 June 13, 2019, will be confirmed.

The objection and motion are ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

39. 19-23565-B-13 GIANNE/RUBY -ROSE APURADO — MOTION TO SET ASIDE DISMISSAL OF CASE
SLE-1 Steele Lanphier — 8-5-19 [27]

DEBTOR DISMISSED:
08/02/2019
JOINT DEBTOR DISMISSED:
08/02/2019

Final Ruling

Debtors Gianne and Ruby-Rose Apurado ("Debtors") move to vacate the order dismissing this Chapter 13 case. Dkt. 27. The order dismissing this Chapter 13 case was entered on August 2, 2019. Dkt. 23.

The court has reviewed the motion and its related declaration and exhibits. The court also takes judicial notice of the docket in this Chapter 13 case. Oral argument will not assist in the resolution of this motion. *See* Local Bankr. R. 9104-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

For the reasons explained, the Debtors' motion will be granted, the order dismissing this case vacated, and the case reinstated.

Discussion

On June 3, 2019, the court entered an order granting the Debtors' motion to pay the filing fee in installments. Dkt. 9. According to that order, filing fee installments are due as follows:

(1) the first installment in the amount of $79.00 due by July 3, 2019;

(2) the second installment in the amount of $77.00 due by August 2, 2019;

(3) the third installment in the amount of $77.00 due by September 3, 2019; and

(4) fourth and final installment in the amount of $77.00 due by October 1, 2019.

Id.

The Debtors failed to timely pay the first installment due July 3, 2019, so on July 8, 2019, the clerk issued an order for the Debtors to show cause why this case should not be dismissed. Dkt. 15. The order to show cause was heard at 1:00 p.m. on July 30, 2019, at which time it was sustained. Dkt. 22. The dismissal order followed on August 2, 2019. Dkt. 23.

Debtors moved to vacate the dismissal order on August 5, 2019. Dkt. 27. Debtors have submitted evidence that the first filing fee installment was paid on July 30, 2019, at 9:24 a.m. and, thus, was paid before the order to show cause was heard. Dkts. 29 at 2:1-2, 30. That being the case dismissal was not appropriate. Vacating the dismissal order and reinstating this case is therefore warranted to avoid manifest injustice to the Debtors. *See* Fed. R. Civ. P. 59(e) (applicable by Fed. R. Bankr. P. 9023); *see also Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

Nevertheless, as a sanction for the Debtors' failure to timely pay the first filing fee installment, the order authorizing payment of the filing fee in installments at dkt. 9 shall be modified as follows:

(1) the second filing fee installment which was due August 2, 2019, shall be paid so that it is ***received*** by the clerk's office no later than August 23, 2019;

(2) the third and fourth filing fee installments shall be paid so that they are

received by the clerk's office by their original due dates as stated in the order at Dkt. 9; and

(3) failure to timely pay the second, third, or fourth installment as stated hereinabove shall result in dismissal of this case without further notice or hearing.

Debtors shall also have 60 days from August 20, 2019, to confirm a plan or this case may be dismissed on the Chapter 13 Trustee's ex parte motion.

Conclusion

For the foregoing reasons, and subject to the foregoing conditions, the order dismissing this Chapter 13 case, dkt. 23, is vacated and this case is reinstated.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes

The court will enter a minute order.

40. 19-20068-B-13 MELANIE PAULY MONTERROSA
MET-5 Mary Ellen Terranella

MOTION TO VACATE DISMISSAL OF CASE
8-6-19 [63]

DEBTOR DISMISSED: 07/03/2019

Final Ruling

Debtor Melanie Pauly Monterrosa ("Debtor") moves to vacate the order dismissing this Chapter 13 case. Dkt. 63. The order dismissing this case was entered on July 3, 2019. Dkt. 50.

The court has reviewed the motion, and all related declarations and exhibits. The court also takes judicial notice of the docket in this Chapter 13 case.

The motion is not opposed. However, the absence of an opposition does not necessarily mean a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. *See generally, In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019).

Oral argument will not assist the court in its resolution of the Debtor's motion. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

For the reasons explained below, the Debtor's motion will be denied without prejudice to the filing of a new Chapter 13 case.

Background

This case was dismissed on July 3, 2019, when the Debtor did not confirm a plan within the time the court set after it sustained the Chapter 13 Trustee's objection to confirmation of an earlier-filed plan. Dkts. 48-50. Debtor's attorney states that dismissal resulted from her inaccurate calendaring of the time within which an amended plan was to be confirmed which, in turn, resulted from numerous continuances in the case. Dkts. 63, 65. Debtor's attorney asserts this constitutes excusable neglect. *Id.*; *see also* dkts. 64, 66. The court disagrees.

Discussion

Determination of excusable neglect begins with an examination of the *Pioneer/Briones* factors, which are as follows: (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

The first factor weighs against relief. The court granted the Debtor's motion to impose the automatic stay in the case. Dkt. 19. The automatic stay terminated when this case was dismissed. Once terminated the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming the automatic stay may be revived if an order that caused it to terminate is vacated, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so here would result in confusion and undue prejudice to creditors who may not comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay.

The second factors weighs in favor of relief. Delay is minimal. The case was

dismissed on July 3, 2019. The Debtor filed an initial motion to vacate the dismissal three days later on July 9, 2019. Dkt. 53. Because that motion was set on the court's calendar reserved for dismissal motions, the motion was denied on August 6, 2019. Dkts. 68, 70. The Debtor re-filed the present motion on August 6, 2019. Dkt. 63. In short, the debtor moved quickly to vacate dismissal.

The third factor weighs heavily against relief. The third factor, the reason for the delay and whether it was within the moving party's control, has been characterized as the most significant factor. *See Gibbons v. U.S.*, 317 F.3d 852, 854 (8th Cir. 2003). In fact, the Ninth Circuit has recognized that the third factor alone may preclude a finding of excusable neglect. *Farral v. Cunningham*, 659 Fed. Appx. 925, 927-28 (9th Cir. 2016). The court therefore gives this factor substantial weight.

The reason given for dismissal here is *counsel's* inaccurate calendaring of the date by which an amended plan had to be confirmed. Dkt. 65 at ¶ 3. The Ninth Circuit has recognized that, in some instances, a calendaring error can be excusable neglect. For example, in *Marx v. Loral Corp.*, 87 F.3d 1049, 1054 (9th Cir. 1996), the Ninth Circuit held that the plaintiffs' untimely filing resulting from calendar miscalculation amounted to excusable neglect. However, in *Marx*, the Ninth Circuit also recognized that the district court's analysis was "considerably lenient" to the offending party and found defendants' arguments "somewhat persuasive." *Id.* Nonetheless, applying the abuse of discretion standard, the Ninth Circuit affirmed the district cour's granting of the extension. *Id.*

In *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004), the untimely filing was caused by a *paralegal's* misreading of the rule governing the filing of a notice of appeal. *Id.* at 855. The Ninth Circuit affirmed the district court's decision to permit the filing of the late notice based on the latter's finding that the paralegal's misreading of the rule was excusable neglect. *Id.* Yet the Ninth Circuit opined that "a lawyer's failure to read an applicable rule is one of the least compelling excuses that can be offered . . . . Had the district court declined to permit the filing of the notice, we would be hard pressed to find any rationale requiring us to reverse." *Id.* at 859. Because the balancing of the *Pioneer* factors is entrusted to the discretion of the district court, the Ninth Circuit affirmed. *Id.*

But there is significant authority to the contrary. *See e.g., Wei v. State of Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985) (holding that inadvertence, oversight, or failure to calendar deadlines does not constitute good cause, or excusable neglect); *Sally v. Truckee Meadows Water Authority*, 2013 WL 5881707, 2 (D. Nev. 2013) ("Were the Court to find that such conduct constituted "excusable neglect," the standard would be rendered meaningless. Indeed, counsel could always aver that he or she inadvertently forgot about the relevant deadline, and, in most cases, it would be extremely difficult to refute such allegations."). And although unpublished, the court's statement *Medina v. Wells Fargo Bank N.A.*, 2016 WL 294429 (C.D. Cal. 2016), is particularly enlightening and persuasive:

> Plaintiff's counsel gives no reason for his failure to timely oppose Defendant's Motion other than that he simply did not calendar its due date. The Court finds this reason insufficient. If counsel's bare, unadorned negligence were enough to grant relief, the word 'excusable' would lose all meaning. []. As the Court in *Pioneer* noted, the requirement that the neglect be 'excusable' is what 'will deter creditors or other parties from freely ignoring court-ordered deadlines in the hopes of winning a permissive reprieve.' 507 U.S. at 395. Indeed, cases that have granted relief all involved something more than just failing to note the relevant deadline. [].

Id. at *2 (internal citations omitted).

In short, the court is not persuaded that counsel's bare and unadorned excuse that she

failed to calendar the date by which an amended plan had to be confirmed is sufficient to tip the balance of this factor in Debtor's favor. Without more, the failure to calendar a due date does not rise to the level of excusable neglect.

There is no showing that Plaintiff acted in bad faith. Thus, the fourth factor favors relief.

On consideration of and based on the weight given to the foregoing factors, the court is not persuaded that the Debtor has established excusable neglect. The debtor's motion to vacate the dismissal order is therefore denied without prejudice to the filing of another Chapter 13 case.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

41. 19-23669-B-13 JPJ-1 **Thru #42**
JACK/MARYANNE JODOIN
Lucas B. Garcia
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-19 [17]

Tentative Ruling

The objection and motion were 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). 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.

The Debtors do not appear to be putting forth their best efforts to repay creditors and therefore the plan does not comply with 11 U.S.C. § 1325(a)(3). Specifically, the plan does not specify an increase in plan payments after Debtor's monthly net income increases due to the cessation of payments on a 401k loan.

Additionally, feasibility depends on the granting of a motion to value collateral for Wheels Financial Group/dba Loan Mart. That motion is heard at Item #42 and denied without prejudice.

The plan filed June 7, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

42. 19-23669-B-13 LBG-1
JACK/MARYANNE JODOIN
Lucas B. Garcia
MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
7-23-19 [21]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to deny the motion to value collateral.

Debtors' motion to value the secured claim of Wheels Financial Group, LLC ("Creditor") is accompanied by Debtors' declaration. Debtor are the owner of a 2006 Toyota Tacoma ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owner, Debtors' 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. 2-1 filed by Wheels Financial Group, LLC dba 1-800LoanMart is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is $8,000.00 as the price a retail merchant would charge for the property. However, Debtors' exhibits include a Kelley Blue Book printout that states a Private Party Range of $8,413 to $10,378. Problematic is that the Kelley Blue Book printout is a third party industry source and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Also the Kelley Blue Book printout, even if it admissible, provides a Private Party Range and the standard here must be a retail valuation taking into account the condition of the car. *See* 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors 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 Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

43. 19-23672-B-13 SUNSHINE COAKER
AP-1 Helga A. White
Thru #44

OBJECTION TO CONFIRMATION OF PLAN BY PNC BANK, NATIONAL ASSOCIATION
7-15-19 [20]

Tentative Ruling

The objection 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). 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

Objecting creditor PNC Bank, National Association ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $26,572.06 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages and ongoing note installments, the plan cannot be confirmed.

The plan filed June 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

44. 19-23672-B-13 SUNSHINE COAKER
JPJ-1 Helga A. White

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-1-19 [23]

Tentative Ruling

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

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

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

Second, the Debtor's plan modifies the claim of PNC Bank, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). Because the Nonstandard Provisions propose to pay what appear to be "adequate protection" payments inasmuch as the monthly postpetition contractual mortgage payment is reduced to $1,200 from the $1,984.18 monthly mortgage payment stated on PNC's proof of claim, Claim No. 1, the plan modifies PNC's claim, which is secured by the Debtor's principal residence and which is therefore impermissible under § 1322(b)(2).

Third, the plan payment in the amount of $1,500.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the

monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan. The aggregate of the monthly amounts plus Trustee's fee is $2,482.80.

The plan filed June 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

45.	19-23772-B-13 JPJ-1	ROBERT/AMBER SYKOSKY Eric John Schwab	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-1-19 [16]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed June 13, 2019, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

46.	18-27077-B-13 JPJ-2	ANDREW/DIANE GARCIA Harry D. Roth	OBJECTION TO CLAIM OF APRIA HEALTHCARE INC, CLAIM NUMBER 10 7-3-19 [52]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 10 of Apria Healthcare Inc Inc and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Apria Healthcare Inc ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $124.80. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 18, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed January 21, 2019.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

47. 19-23780-B-13 CAS-1 **Thru #48**
PATRICIA KOKASON
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
7-24-19 [14]

CONTINUED TO 9/03/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO VALUE COLLATERAL

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

48. 19-23780-B-13 JPJ-1
PATRICIA KOKASON
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [18]

CONTINUED TO 9/03/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S MOTION TO VALUE COLLATERAL

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

49. 19-23982-B-13 PEGGY SOMKOPULOS
WW-1 Mark A. Wolff

MOTION TO VALUE COLLATERAL OF SELECT PORTFOLIO SERVICING
8-2-19 [25]

Tentative Ruling

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

The court's decision is to value the secured claim of Select Portfolio Servicing at $340,000.00.

Debtor's motion to value the secured claim of Select Portfolio Servicing ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3810 Spalding Court, West Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $340,000.00 as of the petition filing date.

According to the Debtor, the valuation is based on two major issues that impact the value of the property. The first is that the house is the subject of a lawsuit against builder Meritage. The lawsuit against the builder is related to construction defects and the builder's failure to fix the remaining problems including poor concrete work, plumbing issues, roof issues, and faulty fire suppression system. The second is that the home sustained damage when a tree fell on the roof. The roof leaks, the fire suppression system was damaged, and several rooms sustained water damage, electrical damage, and plumbing damage. The damage is covered by insurance through Assurant, which has made payment on the insurance policy to Select Portfolio Servicing. The cost to repair the damage is over $120,000.00 and Assurant has made payments totaling less than $20,000.00 thus far.

As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured

claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust with Select Portfolio Servicing secures a claim with a balance of approximately $741,656.00. Therefore, Creditor's claim is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $340,000.00. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

50.	14-27284-B-13 DJC-7	ANDREW/ROWENA CHAMP Diana J. Cavanaugh	CONTINUED MOTION TO SELL 7-16-19 [111]

No Ruling

51.	18-25684-B-13 RK-2	KIRK BUCKHALTER Richard Kwun	OBJECTION TO CLAIM OF SANDRA KOHMILLER, CLAIM NUMBER 7-2 6-24-19 [43]

No Ruling

52. 19-24389-B-13 LISA KNAPP
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF FIRST TECHNOLOGY FEDERAL CREDIT UNION
7-15-19 [10]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of First Technology Federal Credit Union at $15,000.00.

Debtor's motion to value the secured claim of First Technology Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Maxima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $15,000.00 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. 1-1 filed by First Tech Federal Credit Union 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 on April 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,021.00. 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 $15,500.00. *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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

53. 16-21391-B-13 GEORGE TOTTEN MOTION TO REFINANCE
PLG-1 Steven A. Alpert 8-5-19 [42]

Tentative Ruling

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

The court's decision is to deny the motion to refinance.

Debtors seek court approval to incur post-petition credit. Select Portfolio Servicing ("Creditor") has agreed to refinance Debtors' primary residence, which is currently provided in Class 2 of the plan. The refinance increases Debtor's mortgage payment from approximately $610.90 per month to $748.00 or $760.00 per month. The modification is for a term of 360 months, has an interest rate of 5.00%, and the new loan amount will be $101,750.00.

The motion is supported by the Declaration of George Totten. The Declaration affirms Debtor's desire to obtain the post-petition financing and but does not provide evidence of Debtor's ability to pay this claim on the modified terms, particularly in light of the fact that the new mortgage payment is anywhere between $748.00 (dkt. 42, p. 2, para. 3) or $760.00 (dkt. 42, p. 2, para. 4) per month and Debtor's monthly plan payment is $752.00.

The court finds that the motion does not comply with the provisions of 11 U.S.C. § 364(d). The motion is therefore denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

54. 19-23098-B-13 GARY VITALIE
JPJ-1 Mark Shmorgon

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [14]

Tentative Ruling

Introduction

There are four related objections to the confirmation of Chapter 13 plans before the court. Each objection is filed by the Chapter 13 Trustee ("Trustee"). The Trustee's objections are filed in: (1) *In re David Carter*, case no. 19-23222; (2) In re *Lucia Salas*, case no. 19-23827; (3) *In re Steven Slater*, case no. 19-23355; and (4) *In re Gary Vitalie*, case no. 19-23098. Attorney Mark Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases. Attorney Richard Kwun represents the debtor in the *Slater* case.

The objections are the same in each case. The Trustee objects to confirmation to the extent each proposed plan pays attorney's fees through the plan. The Trustee asserts it is less than clear who the attorney of record in each case is. The Trustee has also expressed concerns regarding irregularities in the employment and compensation of the respective debtors' attorneys. More precisely, the Trustee contends that the debtors appear to be represented by different pre-petition and post-petition attorneys and the *Rights and Responsibilities of Chapter 13 Debtors*, Federal Bankruptcy Rules, and the Local Bankruptcy Rules do not permit payment of what is commonly known as the "no-look" Chapter 13 attorney's fee to one attorney or firm for pre-petition work with the balance of the same "no-look" fee paid to another attorney or firm for post-petition work.

The named attorneys filed initial responses in the *Carter*, *Slater*, and *Vitalie* cases. Those responses denied the Trustee's allegations and requested additional time to file more detailed responses. The court granted the requests. The court permitted the named attorneys to file additional responses by July 30, 2019, which they did.[1] The Trustee was also permitted to file a reply to the additional responses by August 6, 2019, which he did.

The court has reviewed the Trustee's objections, the named attorneys' initial and additional responses, the Trustee's replies, and all related declarations and exhibits. The court also takes judicial notice of the dockets in each of the cases identified above. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bank. P. 7052.

For the reasons explained below, the Trustee's objections will be sustained and confirmation of all plans denied without prejudice.

Background

Allen Chern LLP ("Chern Law") is the previous name of Deigham Law LLP, an Illinois limited liability partnership. Chern Law is based in Chicago, Illinois. It is registered to do business in California. It is also registered as a law firm with the California State Bar. Chern Law is purportedly in the process of registering its current name with the California Secretary of State.

The debtors in each of the cases identified above paid Chern Law for pre-petition

[1] Although Mr. Shmorgon represents the debtors in the *Carter*, *Salas*, and *Vitalie* cases and Mr. Kwun represents the debtor in *Slater* case the additional responses filed in all cases are nearly identical. They are also identical to the only response filed in the *Salas* case. Each response is also supported by an identical declaration.

services that Chern Law provided the debtors. The debtor in the *Carter* case paid Chern Law $2,250.00. The debtor in the *Salas* case paid Chern Law $2,250.00. The debtor in the *Slater* case paid Chern Law $2,175.00. And the debtor in the *Vitalie* case paid Chern Law $1,725.00.

In the cases identified above the named attorney have elected to receive the $4,000.00 "no-look" fee permitted by Local Bankruptcy Rule 2016-1(c) as compensation for services provided each debtor. The plans filed in each of the identified cases propose to pay the named attorneys a post-petition balance of the $4,000.00 "no-look" fee that was not paid to Chern Law pre-petition. The plan in the *Carter* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Salas* case proposes to pay Mr. Shmorgon a balance of $1,750.00. The plan in the *Slater* case proposes to pay Mr. Kwun a balance of $1,825.00. And the plan in the *Vitalie* case proposes to pay Mr. Shmorgon a balance of $2,275.00.

Discussion

Whoever prepared the nearly-identical responses to the Trustee's objections failed to consider the Local Bankruptcy Rules. All responses essentially make two arguments: (1) fee sharing outside the context of a single law firm is not prohibited; and (2) in any case, there is no fee sharing outside the same law firm because the named attorneys are partners of Chern Law.[2] Fortunately, the court need not wade into the murky waters of permissible fee-sharing or state law firm partnership law because the Trustee's objections are easily resolved under the Local Bankruptcy Rules.

The court initially notes that the Trustee's objection is not an attempt by the Trustee to prevent the named attorneys from being paid attorney's fees for representing their clients as debtors in their respective Chapter 13 cases. Rather, the Trustee seeks only to permissibly alter the manner in which the named attorneys are paid. And it is in that respect that the Trustee's objections are entirely consistent with the Bankruptcy Code and the Federal and Local Bankruptcy Rules.

In addition to the Bankruptcy Code and the Federal Rules, compensation of attorneys representing debtors in Chapter 13 cases filed in the Eastern District of California is governed by Local Bankruptcy Rule 2016-1. Local Bankruptcy Rule 2016-1(a) states that "[c]ompensation paid to attorneys for the representation of chapter 13 debtors *shall* be determined according to [Local Bankruptcy Rule 2016-1(c)], *unless* a party in interest objects or the attorney opts out of [Local Bankruptcy Rule 2016-1(c).]" (Emphasis added).

Local Bankruptcy Rule 2016-1(c) provides for what is commonly known as a $4,000.00 "no-look" fee in non-business Chapter 13 cases such as the cases identified above.[3] Payment of the $4,000.00 "no-look" fee (i) requires the attorney to comply with a few conditions listed in Local Bankruptcy Rule 2016-1(c);[4] and also (ii) is premised on the absence of an objection. *See* Local Bankr. R. 2016-1(a).

The named attorney did not "opt-out" of compliance with Local Bankruptcy Rule 2016-1(c). In fact, they filed a *Rights and Responsibilities* in each case in which they elected to receive the $4,000.00 "no-look" fee as compensation for their pre- and post-petition services to the respective debtors. What then is the effect of the Trustee's objection? The answer to that question is found Local Bankruptcy Rule 2016-1(a):

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[2]The declarations filed in support of each response state that the named attorneys hold and equity interest in Chern Law.

[3]The amount is $6,000.00 in Chapter 13 business cases.

[4]Those conditions include limiting the fee to $4,000.00 in nonbusiness cases, filing the *Rights and Responsibilities*, agreeing to request additional fees only for substantial and unanticipated post-confirmation work, and accepting limited fees if the case is dismissed. *See* Local Bankr. R. 2016-1(c)(1)-(4).

"When there is an objection [to the "no-look" fee under Local Bankruptcy Rule 2016-1(c)]. . ., compensation **shall** be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." (Emphasis added).

In this court's view, an objection to the "no-look" fee operates much in the same way an objection operates under several provisions of the Bankruptcy Code. For example, under § 522(l) when an exemption is claimed on Schedule C it is deemed allowed unless somebody objects. *See In re Tallerico*, 523 B.R. 774, 782 (Bankr. E.D. Cal. 2015). If an objection is filed the exemption is no longer deemed allowed and the debtor, as the exemption claimant, must demonstrate that the exemption is properly claimed and should be allowed.[5] *Id.* Same with a proof of claim. A claim in a properly filed proof of claim is deemed allowed unless and until somebody objects. *See* 11 U.S.C. § 502(a). The point here is that an objection can effectively allocate a burden of demonstrating that relief is warranted to the place were it lies under applicable law.

In the Eastern District of California the "no-look" fee is presumed to be fair and reasonable pre- and post-petition compensation for attorneys representing debtors in Chapter 13 cases. *See* Local Bankr. R. 2016-1(c)(3) ("Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services[.]"). An objection to the "no-look" fee overcomes that presumptive fairness and reasonableness and places the burden of demonstrating both where it lies under applicable law. And in the case of attorney's fees, here, that is with Chern Law and the named defendants as the fee claimant(s). *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Hence the mandate of Local Bankruptcy Rule 2016-1(a), *i.e.*, when an objection is filed compensation **shall** be determined under §§ 329 and 330.

Turning now to the Trustee's objections filed in the cases identified above. Chern Law and the named attorneys seek payment of the $4,000.00 "no-look" fee through the respective debtors' plans as their fair and reasonable compensation for all pre- and post-petition services. The Trustee objected. That objection means the $4,000.00 "no-look" fee is no longer presumed to be fair and reasonable compensation for representing the debtors in their Chapter 13 cases and the burden is on Chern Law and the named attorneys to demonstrate that it is. That also means several additional things:

(1) it means that Chern Law and the named attorneys must now file, set, and serve appropriate fee motions supported by time and task records sufficient to allow the court to determine fairness and reasonableness under §§ 329 and 330, and the applicable Federal and Local Bankruptcy Rules;

(2) it also means that no fees have been approved or allowed and therefore no fees may be paid;

(3) it also means that since no fees have been approved or allowed and therefore may not be paid, any fees that have been paid may not be applied and instead shall be held in a client trust account pending further order of the court;

(4) it also means that by August 27, 2019, Chern Law and the named attorneys shall file proof that any funds received from the respective debtors are held in a client trust account and the failure to do so will be deemed an act of contempt;

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[5] In states where exemptions are created by, and in most cases limited to, state law and where state law allocates the burden of proof to the exemption claimant, as California does, the debtor as the exemption claimant has the burden of proving an exemption is properly claimed and therefore should be allowed notwithstanding Bankruptcy Rule 4003(c) which places the burden of proving an exemption is not properly claimed on the objecting party. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-337 (9th Cir. BAP 2016); *see also Tallerico*, 532 B.R. 774; *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

(5) it also means that since no fees have been approved and allowed and therefore may not be paid no fees may be paid through any of the plans proposed in the cases identified above;

(6) and it means that the Trustee's objections to confirmation of the plans filed in the cases identified above, to the extent those plans propose to pay fees through the plan, are sustained and confirmation of each plan is denied without prejudice.

Conclusion

For all the foregoing reasons, the Trustee's objections to confirmation of the Chapter 13 plans filed in the *Carter*, *Salas*, *Slater*, and *Vitalie* cases are sustained and confirmation of the plans filed in each of those cases is denied without prejudice.

The court will enter a minute order.

55. 19-20299-B-13 CHRIS LEHNER
CAS-1 Marc A. Carpenter

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-18-19 [35]

CAPITAL ONE AUTO FINANCE VS.

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Ford F150 SuperCrew Cap FX4 Pickup(the "Vehicle"). The moving party has provided the Declaration of LeTesha Lawson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lawson Declaration states that there are 0.965 pre-petition payments in default totaling $419.76. Additionally, there are 3.999 post-petition payments in default totaling $1,739.60.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $10,766.87, as stated in the Lawson Declaration, while the value of the Vehicle is determined to be $8,232.00, as stated in the motion. While this amount differs from the $16,500.00 valuation listed in Debtor's Schedule A/B and D, the Debtor has not filed an opposition to this motion.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The request for relief from stay as to any non-filing co-debtor, who would be liable on

such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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.

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

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

56.	19-20680-B-13 LBG-3	JESSICA KELLER Lucas B. Garcia	CONTINUED MOTION TO CONFIRM PLAN 7-5-19 [58]

No Ruling