

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 5, 2017 at 1:00 p.m.

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1. [17-24500](#)-B-13 MICHAEL/ANTOINETTE CORTEZ OBJECTION TO CONFIRMATION OF
JPJ-1 Mary Ellen Terranella PLAN BY JAN P. JOHNSON AND/OR
Thru #2 MOTION TO DISMISS CASE
8-10-17 [[14](#)]

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

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

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors have taken several deductions on Form 122C-2 that are not permissible. They include deductions for optional telephone services, voluntary retirement deductions, rental property, support of relatives, college expenses for three adult children, and transportation cost over the allowance for a second job. Without these impermissible deductions, the Debtors' monthly disposable income is \$8,479.18 and they must pay no less than \$508,750.80 or 100% to unsecured non-priority creditors.

The plan filed July 18, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

2. [17-24500](#)-B-13 MICHAEL/ANTOINETTE CORTEZ OBJECTION TO CONFIRMATION OF
RMP-1 Mary Ellen Terranella PLAN BY DITECH FINANCIAL, LLC
8-14-17 [[17](#)]

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

September 5, 2017 at 1:00 p.m.

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

Objecting creditor Ditech Financial LLC ("Ditech") holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$3,366.27 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Although requested in the objection, Ditech has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with its objection. Ditech is not awarded any attorneys' fees.

The plan filed July 18, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed. No other relief is granted.

The court will enter an appropriate minute order.

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on June 5, 2017, due to delinquency in plan payments (case no. 16-26181, dks. 26, 29). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

Debtors assert that the present case was filed to stop a repossession. They state that the prior case was dismissed because Debtor Christopher Xavier was laid off from work. Debtors contend that their circumstances have changed and that the present plan will succeed because they have sufficient income to make plan payments with Debtor receiving unemployment benefits pending a new job.

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

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

The court will enter an appropriate minute order.

CIT BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From Automatic Stay and Memorandum of Points and Authorities in Support Thereof has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion for relief from stay.

CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2480 Fountain Hill Loop, Lincoln, California (the "Property"). Movant has provided the Declaration of Justin Roland to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Roland Declaration states that Debtors failed to maintain taxes as required by the terms of their reverse mortgage. Movant asserts that the Debtors are delinquent in post-petition property taxes in the amount of \$1,510.37.

Opposition has been filed by Debtors stating that Movant provides no basis for relief from the automatic stay. Debtors point out that Claim No. 4-2 filed by Movant states that the Debtors are \$0.00 in default as of the date of the petition and that no amended proof of claim has been filed. Debtors further contend that Movant has not demonstrated how the alleged \$1,510.37 in delinquent post-petition property taxes constitutes "cause" to terminate the automatic stay, that there is no equity in the property, and that the property is not necessary to an effective reorganization.

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 does not exist for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Although Movant has filed as an exhibit an alleged "Post-Petition Accounting" as evidence that the Debtors have failed to pay post-petition property taxes (dkt. 33, exh. 4), the document is not authenticated and even contradicts the accounting stated in Claim No. 4-2 filed by Movant. In short, because the accounting is not authenticated and because the Roland Declaration merely states what the unauthenticated accounting states, the court does not give either any weight, which means the court is not persuaded that cause has been established for relief under § 362(d)(1).

The court shall not issue an order terminating and vacating the automatic stay.

Attorneys' Fees Requested

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

5. [17-22511](#)-B-13 JOHN DUNNE
JGL-2 Jennifer G. Lee

MOTION TO CONFIRM PLAN
7-24-17 [[39](#)]

Tentative Ruling: The Motion to Confirm First Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by Freedom Mortgage and the Chapter 13 Trustee.

The court's decision is to not confirm the first amended plan.

First, objecting creditor Freedom Mortgage holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$45,428.20 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,035.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan payment in the amount of \$3,550.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$3,633.56. However, if the Debtor's attorney lowers his 2.07 Administrative Expenses from \$400.00 to \$316.00 per month, then the aggregate issue would be resolved.

Fourth, based on Claim No. 5-1 filed by Freedom Mortgage, the plan will take approximately 94 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

The court will enter an appropriate minute order.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Motion for Hearing on Confirmation of Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 13, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

7. [17-24214](#)-B-13 SHAUN O'DONNELL
JPJ-1 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-10-17 [[20](#)]

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

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

First, the Debtor did not appear at the meeting of creditors set for August 3, 2017, as required pursuant to 11 U.S.C. § 343.

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

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

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

Fifth, the plan calls for the sale of the Debtor's residence by February 1, 2018. However, there is no evidence that the Debtor will be able to sell the property by the deadline, that the Debtor has hired a real estate agent to sell the property, or that the property is even listed for sale. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, the plan cannot be administered because the additional provisions state that the Class 1 arrears and attorney's fees will be paid in full from the sale proceeds of the house. However, these are debts listed in the plan that are scheduled to be paid by the Trustee. Thus, this is unacceptable according to the language of the form plan itself.

Seventh, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Approval of attorney's fees and costs must be obtained by separate motion pursuant to 11 U.S.C. § 330.

The plan filed July 10, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

8. [17-23817](#)-B-13 RAFAEL/VILLA REYES
[17-2127](#) SC-1
DUKE PARTNERS II, LLC V. REYES
ET AL

MOTION FOR REMAND
7-28-17 [[6](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Motion to Remand Removed Action 28 USC 1452 has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant in part and deny in part the motion for remand.

Duke Partners II, LLC ("Plaintiff") requests a court order remanding the adversary proceeding to state court pursuant to 28 U.S.C. § 1452(b) so that Plaintiff may proceed with an unlawful detainer action.

Background

On June 6, 2017, Debtors filed for Chapter 13 relief, case no. 17-23817. This was Debtors' third bankruptcy filed within the past 12 months. See case nos. 17-20282, 17-22413.

The day after on June 7, 2017, a non-judicial foreclosure took place as to real property commonly known as 110 Grubstake Place, Vallejo, California ("Property"). Plaintiff was the highest bidder of the Property. A Trustee's Deed Upon Sale was recorded after the sale. Dkt. 8, Exh. 4.

Sometime following the recording of the deed, Plaintiff served the Debtors a notice to vacate.

On June 27, 2017, Plaintiff commenced an unlawful detainer action against Debtors in the Superior Court of the County of Solano, case no. FCM155096.

On July 17, 2017, the state court action was removed to this court pursuant to a notice of removal by Debtors.

On July 26, 2017, Debtors' bankruptcy was ultimately dismissed for failure to comply with the terms of this court's order granting extension to file and serve all required documents and a motion to confirm plan. Dkt. 26.

Plaintiff asserts that equitable grounds exist justifying remand, namely that (1) bankruptcy case no. 17-23817 was dismissed on July 26, 2017, and there is now no core proceeding, (2) the unlawful detainer is a state law claim and the bankruptcy court has no jurisdiction by way of either federal question or diversity, and (3) the automatic stay was never violated because there was no automatic stay in effect pursuant to 11 U.S.C. § 362(c)(4) since this is Debtors' third bankruptcy filed within the past 12 months. Plaintiff also requests sanctions for "wasting court and private legal resources frivolously" and that all sanctions be paid to the U.S. Bankruptcy Court.

Discussion

This bankruptcy is the Debtors' third case filed within the past 12 months. As such,

no automatic stay was in effect pursuant to 11 U.S.C. § 362(c)(4) and thus Plaintiff did not violate any automatic stay when it commenced the unlawful detainer action in state court the day after Debtors filed their third bankruptcy.

As to the issue of remanding the adversary proceeding to state court, the Plaintiff explicitly requests remand on equitable grounds pursuant to 28 U.S.C. § 1452(b) yet seems to exclusively analyze remand on lack of subject matter jurisdiction under 28 U.S.C. § 1447(c). The court will analyze both grounds in determining whether remand is appropriate.

Under 28 U.S.C. § 1452(a), any party can remove any claim or cause of action to the district court, including directly to the bankruptcy court, for the district where such civil action is pending, if such court has jurisdiction of such claim or cause of action under 28 U.S.C. 1334. A party may then ask the bankruptcy court to abstain and/or remand the case back to the court from which the case was removed. The court has three options for remand: under 28 U.S.C. § 1447(c) it can remand for lack of subject matter jurisdiction or any defect other than subject matter jurisdiction, or under 28 U.S.C. § 1452(b) it can remand on any equitable ground. *Comerica Bank, N.A. v. Brock (In re Brock)*, 2003 Bankr. LEXIS 2299, at *12 (Bankr. N.D. Tex. 2003).

Here, this court remands the unlawful detainer action for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c). Although the bankruptcy court initially had jurisdiction over the removed lawsuit as it relates to the Debtors' bankruptcy under § 1334(b), absent the bankruptcy case there is no federal jurisdiction. The Debtors' bankruptcy was dismissed on July 26, 2017, and all that remains is the unlawful detainer adversary proceeding. An unlawful detainer action alone does not arise under federal law but is purely a creature of state law. *Fannie Mae v. Perez*, 2013 U.S. Dist. LEXIS 35710, at *7 (C.D. Cal. 2013). Therefore, the bankruptcy court does not have jurisdiction over the unlawful detainer action.

Even if this court had subject matter jurisdiction, it may equitably remand under § 1452(b) after abstaining under § 1334(c). Pursuant to § 1334(c)(2), a bankruptcy court must mandatorily abstain from hearing a "proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section" if the proceeding "is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction." 28 U.S.C. § 1334(c)(2).

The unlawful detainer action commenced in the Superior Court of the County of Solano on June 27, 2017, until it was removed by Debtors. The superior court is an appropriate jurisdiction and there is no reason to anticipate that the proceeding will not be timely adjudicated. Thus, this court must mandatorily abstain from hearing the proceeding pursuant to § 1334(c)(2) and equitably remand it pursuant to § 1452(b).

Although requested in the motion, Plaintiff has not stated a statutory basis for the imposition of sanctions. Therefore, no sanctions will be ordered.

For the reasons stated above, the adversary proceeding shall be remanded to the Superior Court of the County of Solano pursuant to 28 U.S.C. § 1447(c) and § 1452(b).

The court will enter an appropriate minute order.

9. [16-28029](#)-B-13 BEVERLY UPCHURCH-ROBINSON MOTION TO CONFIRM PLAN
SDB-2 W. Scott de Bie 7-24-17 [[74](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Motion for Order Confirming Third Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 24, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

10. [16-27331](#)-B-13 DAVID/DANETTE CARTER
JPJ-1 Cindy Lee Hill

OBJECTION TO CLAIM OF DAVID S.
CARTER, CLAIM NUMBER 10
7-12-17 [[37](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of David S. Carter and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of David S. Carter ("Creditor"), Claim No. 10. The claim is asserted to be in the amount of \$8,000.00. Objector asserts that the claim is a duplicate of the claim filed by David S. Carter in the amount of \$8,000.00 at Claim No. 7-1.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that Claim No. 10 is a duplicate of Claim No. 7-1. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

The court will enter an appropriate minute order.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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. 19 of Reviver Financial LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Reviver Financial LLC ("Creditor"), Proof of Claim No. 19 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$4,554.54. 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 March 15, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's Proof of Claim was filed April 4, 2017.

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 court will enter an appropriate minute order.

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the second amended plan.

First, the plan will take approximately 61 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtor has not made a plan payment since March 3, 2017. By the time this motion is heard, an additional plan payment of \$220.00 will be due. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

13. [17-23765](#)-B-13 STEVEN ADAMS
JPJ-1 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-1-17 [[45](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of the California Code of Civil Procedure § 703.140(b)(11)(D), which is available for "the debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is dependent." The Debtor is claiming \$24,778.00 of the potential proceeds from "Homeowner's Bill of Rights" in a pending lawsuit, *Adams v. Roundpoint Mortgage Servicing*. The claim of exemption under California Code of Civil Procedure § 703.140(b)(11)(D) is improper.

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

The court will enter an appropriate minute order.

14. [17-24266](#)-B-13 MICHELLE EASLEY
JPJ-1 Cindy Lee Hill

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-10-17 [[15](#)]

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

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

The plan payment in the amount of \$459.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$546.11. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed June 28, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 4, 2017, due to Debtor's failure to become current on payments by August 1, 2017 (case no. 17-23146, dks. 53, 60). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that he is filing the present bankruptcy to address his outstanding debts. Debtor states that he fell behind on plan payments in the previous case because he experienced health problems, incurred unforeseen medical expenses, and was unable to work full-time. Debtor also acknowledges that he was not present at the first meeting of creditors in the prior case due to miscommunication with his attorney who was traveling abroad at the time and because the Debtor was not comfortable to appear at the meeting of creditors with another attorney. Debtor contends that his circumstances have now changed because he has improved health, is able to work full-time, and his attorney has provided assurances that he will appear at the next meeting of creditors with the Debtor.

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

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

The court will enter an appropriate minute order.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. [15-23677](#)-B-13 FRANK SCRUGGS
CYB-2 Candace Y. Brooks

MOTION TO MODIFY PLAN
7-19-17 [[59](#)]

Final Ruling: No appearance at the July 19, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 19, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18. [17-24479](#)-B-13 TERRY SMITH
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-10-17 [[13](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan, 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 July 7, 2017, will be confirmed.

The court will enter an appropriate minute order.

19. [17-23780](#)-B-13 MELANIE PAULY MONTERROSA CONTINUED OBJECTION TO
JPJ-1 W. Scott de Bie CONFIRMATION OF PLAN BY JAN P.
Thru #20 JOHNSON AND/OR MOTION TO
DISMISS CASE
7-26-17 [[53](#)]

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

The matter will be determined at the scheduled hearing.

The Trustee objects to confirmation on grounds that the Debtor failed to provide to the Trustee requested documents related to her loan consulting business including a completed business examination checklist, bank account statements for the 60-day period prior to the filing of the petition, and proof of required business license and insurance; that feasibility depends on a motion to value collateral of the Internal Revenue Service; and that feasibility depends on a motion to value collateral of Franchise Tax Board.

The Debtor has filed a response stating that the first two objections are resolved. The Debtor asserts that the Trustee's request for business documents has been "substantially satisfied or are moot." The Debtor further contends that a motion to value the collateral of the IRS is unnecessary since the IRS filed an amended claim conceding to and agreeing that the secured portion of its claim is \$14,329.00 as provided for in Debtor's plan.

Discussion

The court finds that the Debtor has only resolved the issue as to valuation of collateral held by the IRS. The Debtor has not provided the Trustee with all business documents nor resolved the issue as to valuation of collateral held by FTB.

The Debtor admits in her motion that she provided the Trustee with "all but one of the bank statements, requested at the hearing, . . . on August 11." Thus, one business bank statement is still missing.

Additionally, the issue as to valuation of collateral held by FTB is not resolved since the court requires clarification as to any senior lien holders as stated at Item #20.

Presently, the court cannot determine whether the plan filed June 15, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The matter will be determined at the scheduled hearing.

20. [17-23780](#)-B-13 MELANIE PAULY MONTERROSA MOTION TO VALUE COLLATERAL OF
SDB-1 W. Scott de Bie STATE OF CALIFORNIA, FRANCHISE
TAX BOARD
8-3-17 [[59](#)]

Tentative Ruling: Debtor's Motion for Order Valuing Collateral has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The matter will be determined at the scheduled hearing.

Debtor's motion to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 167 Bayside Terrace, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of \$437,500.00 as of the petition filing date. 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 which 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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

Discussion

FTB secures a claim with a balance of approximately \$131,525.31. However, the court cannot determine from the motion, memorandum of points and authorities, declaration, or exhibits which liens are senior to that of FTB. The court can only speculate that the holder of the first deed of trust is Wells Fargo Bank with account number ending in 4353 and that the first deed of trust secures a claim with a balance of approximately \$388,790.90 and arrears of \$66,765.00.

Should this be the case, FTB's claim secured by a junior deed of trust would be completely under-collateralized. FTB's secured claim would be in the amount of \$0.00, and therefore no payments would be made on the secured claim under the terms of any confirmed Plan. 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) would be granted.

21. [17-24480](#)-B-13 RENEE MARTIN
ASW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-27-17 [[23](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 931 Oakbrook Drive, Fairfield, California (the "Property"). Movant has provided the Declaration of Kayo Manson-Tompkins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on October 14, 2016. Exh. 1, Dkt. 26. Movant seeks to proceed with the unlawful detainer action filed in state court on March 22, 2017.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano on March 22, 2017, with a Notice to Quit served on November 15, 2016. Exhs. 2, 3, Dkt. 26.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. 1, Dkt. 26. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The court will enter an appropriate minute order.

22. [16-26585](#)-B-13 CATHERINE CRUZ AND JACK MOTION FOR RELIEF FROM
EAT-1 LAM AUTOMATIC STAY
Bert M. Vega 8-7-17 [[67](#)]
WELLS FARGO BANK, N.A. VS.

DEBTORS DISMISSED:
08/08/2017

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The case having been dismissed on August 8, 2017, the motion for relief from automatic stay is denied as moot.

The court will enter an appropriate minute order.

23. [13-32286](#)-B-13 MARCOS SMITH
WW-3 Mark A. Wolff

CONTINUED OBJECTION TO CLAIM OF
VICTOR CORREIA, CLAIM NUMBER
6-1
6-1-17 [[80](#)]

Tentative Ruling: The Objection to Claim of Victor Correia, Claim Number 6-1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.

This matter was continued from July 17, 2017, and again from August 15, 2017, given representation at the hearing in open court by Debtor's attorney that the Debtor and creditor Victor Correia ("Creditor") are working on a settlement agreement. Absent a resolution, the objection will be sustained.

Debtor requests that the court disallow the claim of Creditor, Claim No. 6-1. The claim is asserted to be in the amount of \$22,785.53. Objector asserts that the claim was paid through the plan of his prior bankruptcy case (no. 08-26780) and that Creditor received a sum of \$20,185.53. Objector believes that a balance of only \$4,409.47 is due and requests that the claim be disallowed to the extent it exceeds \$12,158.96 and that all the funds in excess of this be paid to the Chapter 13 Trustee.

Responses

Responses were filed by both the Chapter 13 Trustee and Creditor.

Chapter 13 Trustee Jan Johnson asserts that the deadline to file an objection to the Notice of Filed Claims has passed. Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims shall be filed no later than 60 days after service of the Notice of Filed Claims. In this case, more than three years have passed. Pursuant to Local Bankr. R. 3007-1(d)(4), any objection filed after the 60 day period, if sustained, shall not result in any order that the claimant refund amounts paid on account of its claim. The Trustee has already paid Creditor \$22,000.00 and opposes the Objector's request to the extent it would require Creditor to refund any of this amount to the Trustee.

Creditor has filed a response reiterating the Trustee's assertion that the deadline to file an objection to the Notice of Filed Claims has expired pursuant to Local Bankr. R. 3007-1(d)(3). Creditor also states that the amount claimed in Claim No. 6-1 is correct and is comprised of \$12,158.96 in pre-petition claims and new attorneys fees and costs incurred from this second bankruptcy case, the filing of a second adversary proceeding, and in negotiating a settlement agreement.

24. [17-22286](#)-B-13 GERARDO CASTILLO
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-10-17 [[46](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan, 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 8, 2017, will be confirmed.

The court will enter an appropriate minute order.

25. [17-21287](#)-B-13 PAUL/REGINA HOBIE MOTION TO CONFIRM PLAN
CA-3 Michael David Croddy 7-17-17 [[25](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The Debtors' Motion to Confirm Debtors' First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 17, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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. 3 of Parlay Capital and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Parlay Capital ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$7,312.70. 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 March 15, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 29. The Creditor's Proof of Claim was filed April 3, 2017.

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 court will enter an appropriate minute order.

27. [17-24093](#)-B-7 WYSPER HILTON MOTION FOR RELIEF FROM
JHW-1 Mikalah R. Liviakis AUTOMATIC STAY
Thru #28 7-25-17 [[31](#)]
AMERICREDIT FINANCIAL
SERVICES, INC. VS.

CASE CONVERTED: 08/21/2017

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The case having been converted on August 21, 2017, the motion for relief from automatic stay is denied as moot.

The court will enter an appropriate minute order.

28. [17-24093](#)-B-7 WYSPER HILTON OBJECTION TO CONFIRMATION OF
JPJ-1 Mikalah R. Liviakis PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-10-17 [[44](#)]

CASE CONVERTED: 08/21/2017

Final Ruling: No appearance at the September 5, 2017, hearing is required.

The case having been converted on August 21, 2017, the objection to confirmation of plan and conditional motion to dismiss case are overruled as moot and denied as moot, respectively.

The court will enter an appropriate minute order.

29. [17-24198](#)-B-13 NAITA SAEFONG
JPJ-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-10-17 [[15](#)]

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

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

First, the plan payment in the amount of \$473.40 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$881.41. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, according to Schedule I, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Third, feasibility depends on the granting of a motion to value collateral for One Main Financial. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion and the hearing on valuation must be concluded before or in conjunction with the confirmation of the plan. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral.

The plan filed June 26, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

30. [16-27299](#)-B-13 HEATHER MARTIN
JPJ-2 Thomas L. Amberg

OBJECTION TO CLAIM OF WAHR
FINANCIAL GROUP C/O LAW OFFICES
OF KENOSIAN & MIELE, CLAIM
NUMBER 11
7-12-17 [[25](#)]

Final Ruling: No appearance at the September 5, 2017, hearing is required.

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. 11-1 of Wahr Financial Group c/o Law Offices of Kenosian & Miele and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Wahr Financial Group c/o Law Offices of Kenosian & Miele ("Creditor"), Proof of Claim No. 11-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$11,966.15. 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 March 1, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 15. The Creditor's Proof of Claim was filed March 3, 2017.

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 court will enter an appropriate minute order.