UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 6, 2016 at 1:00 p.m.

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1. 16-24108-B-13 **Thru #2** | DAVID MARTIN, Michael O'Dowd Hays | MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7, 7-19-16 [13]

Tentative Ruling: The Motion to Dismiss Debtor's Petition or to Convert the Petition to a Chapter 7 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the court is unable to locate any certificate of service associated with this motion (or reply) as required by Local Bankr. R. 9014-1(e). Therefore, the motion is denied without prejudice for defective service and non-compliance with the local rules.

The court shall enter an appropriate minute order.

2. 16-24108-B-13 JPJ-1 | DAVID MARTIN, Michael O'Dowd Hays | AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 8-22-16 [33]

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

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

First, Debtor testified under oath at the first meeting of creditors on August 11, 2016, that he sold a motorcycle, several vehicles, a forklift, a trailer, a cargo container, and a 5th wheel trailer within the 2-year period prior to the filing of the petition, that he is still in possession of some of the assets that were sold, that he owns helicopter parts, and that he has unsecured non-priority credit card debts. None of this information was disclosed in the petition, schedules, or Statement of Financial Affairs. However, a review of the court's docket shows that the Debtor filed amended schedules on August 31, 2016, and September 1, 2016, to include the missing property.

Second, the Debtor has failed to disclose that a lawsuit was filed 3 days after the petition was filed. This lawsuit does not appear on the amended schedules filed on August 31, 2016, and September 1, 2016.

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

The court shall enter an appropriate minute order.

3. 16-24208-B-13 AMBER CURE
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR CONDITIONAL MOTION TO DISMISS CASE
8-11-16 [21]

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

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

First, the Debtor did not appear at the meeting of creditors set for August 4, 2016, and the continued meeting of creditors set for August 18, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the plan payment in the amount of $2,000.00 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 $2,258.00. Additionally, the language in the Additional Provisions is unclear as to when administrative expenses and Class 1 and Class 2 claims will be paid. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,000.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,000.00 will also be due. 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).

Fourth, the plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home mortgage, including a specific post-petition arrearage amount, interest rate, and monthly dividend. The plan cannot be effectively administered.

The plan filed June 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

4. 16-24209-B-13 JUANITA JOHNSON
JPJ-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-11-16 [18]

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

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

First, although the Debtor did not appear at the meeting of creditors set for August 4, 2016, the Debtor did appear at the continued meeting of creditors set for August 18, 2016, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor has not provided the Trustee with copies of social security income statements 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).

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 payment in the amount of $1,236.00 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 $1,455.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Sixth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,236.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,236.00 will also be due. 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).

Seventh, the plan does not specify a cure of the post-petition arrearage owed to Summit Ridge Homeowner's Association, including a specific post-petition arrearage amount, interest rate, and monthly dividend. The plan cannot be effectively administered.

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

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

The court shall enter an appropriate minute order.

5. 16-20613-B-13 URAL THOMAS
LBG-3 Lucas B. Garcia

MOTION TO CONFIRM PLAN
7-15-16 [73]

CONTINUED TO 9/20/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH EVIDENTIARY HEARING ON MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. PER STIPULATION.

Final Ruling: No appearance at the September 6, 2016, hearing is required.

The court shall enter an appropriate minute order.

6.	12-28917-B-13 JPJ-2	ALBERT WILSON Peter L. Cianchetta	CONTINUED MOTION TO DISMISS CASE 6-13-16 [70]

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

The court's decision is to dismiss the case.

The Trustee moves to dismiss this case on the ground that the Debtor neither timely objected to amended Claim No. 3-5 filed of Merrill Lynch FAO Martin G. Weber Living Trust nor file a modified plan pursuant to Local Bankr. R. 3007-1(d). Taking into account Claim No. 3-5, the Trustee calculates that the confirmed plan will take a total of 92 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 32 months longer than the proposed commitment period of 60 months. The case is currently in month 51.

Debtor has filed a response stating that he is in final negotiations with Martin Weber to resolve the issue raised by the Trustee.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

7. 16-23119-B-13 JPJ-2 **Thru #9**
DARLENE CHIAPUZIO-WONG
Peter G. Macaluso
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-27-16 [25]

Tentative Ruling: The Objection to Exemptions has been set for hearing on at least 28-days 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to sustain the objection.

The Debtor has filed an amended Schedule C on August 26, 2016, changing the "ES1 - #1757 - Unknown Exemption" to objected to by the Chapter 13 Trustee to "C.C.P. § 703.140(b)(5)."

However, the Debtor has not amended Schedule C to correct the exemption for "Retirement - CALPERS" and "Retirement - Greyhound Lines" using California Code of Civil Procedure § 703.140(b)(10)(E). The Debtor has not cited any legal authority for the proposition that he may exempt "100% of the fair market value" of these assets instead of an actual dollar value. The Debtor must claim an actual dollar amount when using this exemption rather than simply listing a percentage.

The Trustee's objection is sustained and the claimed exemption for Retirement - CALPERS and Retirement - Greyhound Lines is disallowed.

The court shall enter an appropriate minute order.

8. 16-23119-B-13 PGM-2
DARLENE CHIAPUZIO-WONG
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF LUIS GARCIA SAMANO
7-27-16 [28]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

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

The court's decision is to value the secured claim of Luis Garcia Samano at $0.00.

The motion to value filed by Debtor to value the secured claim of Luis Garcia Samano ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5406 Butte Circle, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of $465,000.00 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. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $629,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $9,576.20. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall 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) is granted.

The court shall enter an appropriate minute order.

9.	16-23119-B-13 PGM-3	DARLENE CHIAPUZIO-WONG Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF BPE LAW GROUP 7-27-16 [34]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

The Motion to Value Collateral of [BPE Law Group] has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested

by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of BPE Law Group at $0.00.

The motion to value filed by Debtor to value the secured claim of BPE Law Group ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5406 Butte Circle, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of $465,000.00 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. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $629,000.00. The second deed of trust secures a claim with a balance of approximately $9,576.20. Creditor's third deed of trust secures a claim with a balance of approximately $14,719.37. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall 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) is granted.

The court shall enter an appropriate minute order.

10. 16-23919-B-13 APN-1 **Thru #11**

TONI HERRERA
Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY NISSAN MOTOR ACCEPTANCE CORPORATION
8-3-16 [19]

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

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

The Debtor's plan values a 2014 Nissan Sentra SL, secured collateral of Nissan Motor Acceptance Corporation ("Creditor"), at $16,331.00 in Class 2 of the plan filed June 30, 2016. The Creditor disputes the Debtor's valuation arguing that the vehicle was purchased less than 910 days prior to the filing of this bankruptcy case. The Creditor has provided a copy of the Security Agreement, which shows that the debt was incurred on October 26, 2014, which is 599 days prior to the filing of this bankruptcy. Dkt. 22, Exh. A.

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Because the Debtor incurred the debt 599 days before the bankruptcy filing, the entire amount of the debt on the vehicle must be paid. On this ground, the Creditor's objection is sustained.

However, the court will overrule Creditor's objection related to increasing the interest rate to 6.50%. The Creditor has produced no evidence in support of its objection that Debtors' proposed 4.10% interest rate is inconsistent with *Till*.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 541 U.S. 465 (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. The debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

"Moreover, starting from a concededly *low* estimate and adjusting *upward* places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." *Till* at 479.

Here, Creditor has provided no admissible evidence, in the form of declaration or affidavit in support of its objection, of its assertion that the loan should be repaid at higher than Debtor's proposed 4.10% interest rate. Creditor argues that the national prime interest rate of 3.50% is insufficient to account for the risk of default by the Debtor; however, that is not the interest rate proposed by the Debtor. In fact, the Debtor has already provided a 0.60% increase above the national prime

interest rate to account for any greater risk of default. Since the Creditor has produced no evidence that the Debtor's proposed 4.10% interest rate is inconsistent with *Till*, the Creditor's objection is overruled.

Because the plan does not provide for the entire amount of the debt on the vehicle, the plan filed June 30, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

The court shall enter an appropriate minute order.

11.	16-23919-B-13 JPJ-1	TONI HERRERA Steele Lanphier	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-11-16 [24]

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 for reasons stated at Item #10 and conditionally deny the motion to dismiss.

Feasibility of the plan depends on the granting of a motion to value collateral of Nissan Motor Acceptance for a 2010 Toyota Corolla. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

The plan filed June 30, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

12. 16-24124-B-13 JOHN DUCHARME
JPJ-1 Mikalah R. Liviakis

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-27-16 [13]

Tentative Ruling: This matter was continued from August 16, 2016, to be heard after the continued meeting of creditors held on September 1, 2016. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $579.00, which represents the first plan payment that was due July 25, 2016. 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 Debtor did not submit proof of his social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Third, the Debtor has not provided his last 4 years of tax returns pursuant to 11 U.S.C. § 1308. The tax returns must be reviewed in order to assess feasibility of the plan and whether the plan has been proposed in good faith.

Fourth, the Debtor has not disclosed income in the amount of $1,500.00 on the Chapter 13 Statement of Your Current Income (Form 122C-1). The plan cannot be fully assessed without this income being properly disclosed. 11 U.S.C. § 1325(b)(1)(B).

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

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

The court shall enter an appropriate minute order.

13. 16-23027-B-13 ANGELINA KUBRAKOV
MJ-2 Pro Se
Thru #14

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
8-15-16 [56]

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

The court's decision is to dismiss this case pursuant to 11 U.S.C. § 109(e).

In addition to its objection to plan confirmation, secured Creditor Wells Fargo Bank N.A. ("Creditor") moves to dismiss this Chapter 13 case on the basis Angelina Kubrakov ("Debtor") is ineligible under 11 U.S.C. § 109(e) to be a Chapter 13 debtor. The court agrees. Therefore, Creditor's motion to dismiss included within its objection to confirmation of the Debtor's plan will be granted and this case will be dismissed. Creditor's objection to confirmation will be denied as moot.

Section 109(e) of the Bankruptcy Code states that "[o]nly an individual with regular income that owes, on the date of filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 . . . may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e). Eligibility under § 109(e) is normally determined as of the petition date by a review of a debtor's originally filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). Eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

According to the initially-filed Schedule E/F, the Debtor's total noncontingent, liquidated, and undisputed unsecured debt is $521,000. [Dkt. 11].[1] That exceeds the § 109(e) statutory cap of $383,175.00 which means the Debtor is ineligible to be a debtor under chapter 13 of the Bankruptcy Code as a matter of law. Therefore, Wells Fargo's motion to dismiss this Chapter 13 case included within its objection to confirmation of the Debtor's plan is granted and this case is ordered dismissed.

The court shall enter an appropriate minute order.

14. 16-23027-B-13 ANGELINA KUBRAKOV
PPR-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC AND/OR MOTION TO DISMISS CASE
8-10-16 [52]

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

The court's decision is to overrule the objection as moot for the reasons stated at

[1]According to an amended Schedule E/F filed on September 1, 2016 (dkt. 73), the Debtor's noncontingent, liquidated, and undisputed unsecured debt remains at $521,000.00.

Item #13.

The court shall enter an appropriate minute order.

15. 16-24327-B-13 RACHEL WILLIAMS
JPJ-1 Chad M. Johnson

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-11-16 [18]

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).

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 19, 2016. The confirmation hearing for the amended plan is scheduled for October 11, 2016. The earlier plan filed June 30, 2016, is not confirmed.

The court shall enter an appropriate minute order.

16. 15-28829-B-13 WAGMA SAFI
MLA-4 Mitchell L. Abdallah

OBJECTION TO CLAIM OF NATIONSTAR MORTGAGE LLC, CLAIM NUMBER 4 AND/OR MOTION TO ESTIMATE CLAIM OF NATIONSTAR MORTGAGE, LLC
8-15-16 [62]

Tentative Ruling: The Debtor's Objection to Claim Number 4-1 and Motion to Estimate Claim of Nationstar Mortgage LLC has not been set for hearing with sufficient notice. An objection to claim must be set for hearing on at least 44 days' notice as required by Local Bankruptcy Rule 3007-1(b)(1) or at least 30 days' notice as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection.

The Debtor's objection to claim does not provide at least 30 days' notice as required by Local Bankruptcy Rule 3007-1(b)(2). The Debtor's objection provides only 23 days' notice.

The court's decision is to dismiss the objection to claim without prejudice due to insufficient notice.

The court shall enter an appropriate minute order.

17. 15-25730-B-13 JEFFREY/KELLY ERCOLINI — MOTION TO APPROVE LOAN MODIFICATION
PGM-3 Peter G. Macaluso — 8-5-16 [63]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

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

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

Debtors seeks court approval to incur post-petition credit. Nationstar Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $2,029.99 a month to $1,903.66 a month. As of the modification date, the principal balance of the loan that will be due and payable is $331,586.59. The interest rate of 2.000% began to accrue on the new principal balance as of February 1, 2016. The interest rate will increase in years 6 and 7 to maturity. The first payment was due by March 1, 2016, and will be due each subsequent month for a total of 60 months. The modification does not affect the distribution to unsecured creditors who were originally to be paid 0.00% in the original plan.

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

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

The court shall enter an appropriate minute order.

18. 12-28631-B-13 KEVIN/INEZ SCOTT
PLC-12 Peter L. Cianchetta

MOTION TO VACATE DISMISSAL OF CASE
8-16-16 [150]

DEBTOR DISMISSED:
08/02/2016
JOINT DEBTOR DISMISSED:
08/02/2016

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

The court's decision is to grant the motion to vacate dismissal.

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the case. Debtors state that they received the Trustee's letter, dated June 28, 2016, regarding delinquency of plan payments, on July 29, 2016. In other words, the Debtors received the letter over one month after the date written on the letter. Furthermore, the letter provided 10 days for Debtors to cure their delinquency. The Debtors believed they had 10 days after July 28, 2016, to cure the delinquency, and the Debtors made their payment on August 1, 2016, they day that the Debtor received his pay check. The Debtors are in month 51 of their 60-month plan. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtors cured their delinquency on August 1, 2016, after mistakenly believing that they were within the deadline to cure their delinquency. More significantly, the Debtors have paid 51 months of the 61-month plan and dismissing this case would cause prejudice to the Debtors. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the Debtors mistook the Trustee's letter to mean that they were delinquent the month of July rather than June, and they believed that they had 10 days after July 28, 2016, to cure their delinquency. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court shall enter an appropriate minute order.

19.	16-24033-B-13 AP-1	JOHN PETERSON Douglas B. Jacobs	OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS, INC. 8-12-16 [17]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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).

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

Subsequent to the filing of the Quicken Loans, Inc.'s objection, the Debtor filed an amended plan on August 24, 2016. The confirmation hearing for the amended plan is scheduled for October 11, 2016. The earlier plan filed June 22, 2016, is not confirmed.

The court shall enter an appropriate minute order.

20. 16-24333-B-13 RYAN BLAKE
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-11-16 [26]

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 Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 402(b)(1)(B). The meeting of creditors was continued to September 1, 2016, to allow the Debtor the opportunity to present evidence of his social security number, but the Debtor did not appear.

The plan filed July 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

21.	16-20634-B-13 PLC-10	CARL TINNEY AND EILEEN RICKENBACH Peter L. Cianchetta	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF CIANCHETTA AND ASSOCIATES FOR PETER CIANCHETTA, DEBTORS' ATTORNEY(S) 7-13-16 [66]

DEBTOR DISMISSED:
04/03/2016
JOINT DEBTOR DISMISSED:
04/03/2016

Tentative Ruling: This matter was continued from August 9, 2016. The Motion for Compensation by Peter Cianchetta as Debtor's Attorney (Opting Out of the Guidelines) (First Interim Application for Fees) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition has been filed.

The court's decision is to deny with prejudice the request for attorney's fees and costs in its entirety under § 330 and the attorney's fees and costs in the amount of $5,375.00 that Applicant received from the Debtors and the Trustee will be ordered returned to the Debtors. Furthermore, Creditors' request(s) for sanctions under Federal Rule of Bankruptcy Procedure 9011, request for leave to supplement their current sanctions motions and/or to file a subsequent sanctions motion, and request for attorney's fees are denied with prejudice

This is a motion for compensation filed by Peter L. Cianchetta ("Applicant"). Applicant represented Debtors Carl Thomas Tinney and Eileen Anna Rickenbach ("Debtors") in two separate Chapter 13 cases. The first Chapter 13 case was case no. 16-20138 filed on January 11, 2016, and dismissed on February 1, 2016, when required documents were not timely filed. The second Chapter 13 case is this case, case no. 16-20634, filed on February 4, 2016, and dismissed on April 3, 2016, based on the Debtors' ineligibility under 11 U.S.C. § 109(e). The motion is opposed by the Debtors and by creditors Denali Knudson-Dacanay, Henriquetta Quiso-Sevilla, and Joanna Lopez ("Creditors"). Applicant did not file a reply.

Although it is not entirely clear, Applicant's request for attorney's fees and costs in this case also includes attorney's fees and costs incurred in the first Chapter 13 case.[1] Based on what the court is able to piece together from the motion (dkt. 66), Exhibit B to the motion (dkt. 68), and the declaration filed in support of the motion (dkt. 69), this is how the court understands Applicant's request:

$ 8,394.50	total fees incurred and billed between January 11, 2016, through March 3, 2016
$ 620.00	costs incurred
$ 9,014.50	total
($1,000.00)	less amount paid by Debtors at inception of this case at $380 retainer and $620 filing fees (motion @ 2:19-20)
($4,375.00)	less amount received from the Chapter 13 Trustee ("Trustee") at dismissal of this case (motion @ 2:23-24)
$ 3,639.50	*balance that counsel offers to "forgive"* (declaration @ 6:16-17)

So it appears that what Applicant actually requests is an order approving attorney's

[1] Although the unpaid attorney's fees and costs attributed to the first case are an unsecured claim in the context of this case, s*ee In re Gutierrez*, 309 B.R. 488 (Bankr. W.D. Tex. 2004), the court assumes they may be recoverable under § 330 in this case. *In re Busetta-Silvia*, 314 B.R. 218, 223-224 (10th Cir. BAP 2004).

fees and costs totaling $5,375.00 which have already been paid to Applicant and which Applicant received (1) from the Debtors at the inception of this case and (2) from the Trustee upon dismissal of this case. Applicant then offers to "forgive" the remaining balance of $3,639.50. For the reasons explained below, Applicant's request for attorney's fees and costs under § 330 will be denied in its entirety and the attorney's fees and costs in the amount of $5,375.00 that Applicant received from the Debtors and the Trustee will be ordered returned to the Debtors.

Before the court may award attorney's fees and costs under § 330, and before the court need make any reasonableness determination, the court must first find that representation was necessary and beneficial to the Debtors. *See* 11 U.S.C. § 330(a)(4)(B). The fee applicant bears the burden of proving necessity and benefit. *In re Las Vegas Monorail Co.*, 458 B.R. 553, 556-557 (Bankr. D. Nev. 2011) (citations omitted). Applicant has not met that burden inasmuch as Applicant has not demonstrated that the Debtors benefitted from either the first or second Chapter 13 case.

The first Chapter 13 case survived only 21 days. It was filed on January 11, 2016, and dismissed on February 1, 2016, when required documents were not timely filed. This case - the second Chapter 13 case - was filed on February 4, 2016, three days after the first case was dismissed. Although this case lasted two months, it too was ultimately dismissed on April 3, 2016, based on the Debtors' ineligibility under § 109(e). The § 109(e) dismissal is critical to the court's analysis.

Applicant knew on January 8, 2016, and thus knew before both Chapter 13 cases were filed, that the Debtors were ineligible under § 109(e) to be Chapter 13 debtors. Nevertheless, Applicant told the Debtors he could "cram" a creditor to reduce debt. Cramdown would not have made the Debtors eligible for Chapter 13 relief. Cramdown would occur well after the petition date and likely in a confirmed plan. Chapter 13 eligibility, however, is determined as of the petition date based on a review of the originally filed schedules. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). Even in limited circumstances when a bankruptcy court may look beyond the schedules, eligibility is still determined based on debt as of the petition date. *Id.* at 981; *see also Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918–921 (9th Cir. BAP 2006). The eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999). Thus, even if successful, cramdown would not have made the Debtors eligible Chapter 13 debtors under § 109(e) on either on January 11, 2016, or February 4, 2016.

The court discerns no benefit from service provided to Debtors in a Chapter 13 case when the Debtors are statutorily ineligible for Chapter 13 relief in the first instance and counsel is aware of the ineligibility. Consistent with that observation, Applicant has not demonstrated that the Debtors derived any benefit from either the first or second Chapter 13 case - both of which Applicant knew the Debtors were ineligible to file and both of which were dismissed in their infancy. Therefore, Applicant's § 330 request for attorney's fees and costs from January 11, 2016, through and including March 3, 2016, incurred in connection with both chapter 13 cases will be denied in its entirety. Further, to the extent Applicant received $1,000.00 from the Debtors prior to this second Chapter 13 case and $4,375.00 from the Trustee upon dismissal of this second Chapter 13 case, Applicant will be ordered to return $5,375.00 to the Debtors.

In addition to their opposition to the motion, Creditors also move for sanctions under Federal Rule of Bankruptcy Procedure 9011. That request will be denied. Inasmuch as the request for sanctions is included in the opposition it does not comply with the separate motion or 21-day "safe-harbor" requirements. *See* Fed. R. Bankr. P. 9011(c)(1)(A). Additionally, because the court has sustained Creditors' objection to the motion and denied Applicant's request for attorney's fees and costs, Creditor's request for leave to supplement their request for sanctions and/or to file a subsequent sanctions motion will also be denied. And for the same reason, the court declines Creditors' invitation to enter an order to show cause under 9011(c)(1)(B).

Finally, the court denies Creditors' request for attorney's fees incurred in opposing Applicant's § 330 motion. Creditors' cite no statutory or contractual basis for an award of attorney's fees and the court will not use § 105(a) to create a remedy where none exists.

Therefore, based on the foregoing;

It is ordered that Applicant's request for an award of attorney's fees and costs incurred in connection with the first and second Chapter 13 cases is denied with prejudice;

It is further ordered that all attorney's fees and costs previously paid to Applicant by the Debtors and the Trustee in the amount of $5,375.00 is ordered disgorged and Applicant shall return $5,375.00 to the Debtors within fourteen (14) days of the date this order is entered on the docket;

It is further ordered that Creditors' request(s) for sanctions under Federal Rule of Bankruptcy Procedure 9011 and Creditors' request for leave to supplement their current sanctions motions and/or to file a subsequent sanctions motion are denied with prejudice; and

It is further ordered that Creditor' request for attorney's fees under 11 U.S.C. § 105(a) is denied with prejudice.

22. 16-24635-B-13 MICHAEL/CLARA LANGTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
KHS-2 Scott J. Sagaria — 8-19-16 [13]

2015-3 IH2 BORROWER, LP VS.

Final Ruling: No appearance at the September 6, 2016, hearing is required.

The Motion for Relief From the Automatic Stay Provisions of 11 USC § 362(a); Points and Authorities 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.

2015-3 IH2 Borrower L.P. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5383 Elderdown Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Jessy Nanoff 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 and that it entered into a written lease agreement with Debtors. *See* dkts. 15, 16. Movant seeks to proceed with the unlawful detainer action filed in state court on July 29, 2016.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtors would be at best tenants at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on July 29, 2016, with a Notice to Quit served on July 6, 2016. *See* dkt. 15.

Movant has provided a copy of the lease agreement entered into between Movant and Debtors. Dkt. 16. 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 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate minute order.

23. 13-32737-B-13 CATHERINE PORTER
PGM-5 Peter G. Macaluso

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
7-20-16 [57]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change Filed on 4/22/16 & Request for Attorney Fees Under C.C.P. §§ 1717 & 2941 has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(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 court's decision is to sustain in part and overrule in part the objection.

Debtor objects to the Notice of Mortgage Payment Change filed by Crestgate Taylor Homeowners Association ("Creditor"). Creditor seeks an assessment payment increase from $175.00 to $200.00 beginning May 13, 2016. Creditor asserts that the Trustee, on behalf of the Debtor, had been making post-petition payments to the Creditor at the 2010-2013 assessment rate of $175.00 per month and not at the increased rate at which all other association members were paying. Debtor asserts that she did not see any documentation to support the Creditor's demand amount but now, upon receipt of evidence supporting the increase, is agreeable to the increased assessment payment effective April 2016 only.

The Trustee provides a limited objection stating only that it opposes being required to recover any overpayment that was made prior to the receipt of the objection.

Discussion

This objection is a contested matter to the claim being asserted by Creditor. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The court has reviewed the Notice of Mortgage Payment Change filed April 22, 2016, and Proof of Claim No. 3 filed by Creditor. The court finds that the Creditor has sufficiently explained its reasons for increasing the assessment payment from $175.00 to $200.00. Therefore, as to this increase, the objection is overruled. As to all other matters, the objection is sustained.

Attorney's Fees Requested

Though requested in the objection, Debtor has not stated either a contractual or statutory basis for the award of attorney's fees in connection with this objection. Debtor is not awarded any attorney's fees.

Based on the evidence before the court, the objection to the notice of mortgage payment change is sustained in part and overruled in part.

The court shall enter an appropriate minute order.

24. 16-24043-B-13 LAURA SHORTRIDGE
JPJ-1 Carl H. Mandabach

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-11-16 [20]

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

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

First, although the Debtor did not appear at the first meeting of creditors set for August 4, 2016, the Debtor did appear at the continued meeting of creditors set for August 18, 2016, as required pursuant to 11 U.S.C. § 343.

Second, although the Debtor did not file the Rights and Responsibilities of Chapter 13 Debtors and their Attorneys along with her petition, the Debtor did file this form on August 25, 2016.

Third, the Debtor has not provided the Trustee with requested copies of items related to her business including, but not limited to, a completed business examination checklist, income tax returns for a 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, profit and loss statements for the 6-month period preceding the filing of this case, and proof of all required insurance and licenses. Until these documents are provided, it cannot be determined whether the business is solvent and necessary for reorganization.

Fourth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to her operation of a business as required under Schedule I.

Fifth, the Debtor has not amended the Statement of Financial Affairs Question #27 to reflect that within the last 4 years she has been self-employed as indicated on Schedule I of the petition.

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Seventh, the Debtor has claimed an interest in various household goods, clothing, jewelry, cell phones, and a checking account as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Eighth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Debtor's voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and therefore such income must be applied to make plan payment sunder 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012).

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

The court shall enter an appropriate minute order.

25. 16-24249-B-13 LAWRENCE/ROBERTA CURTIS
JPJ-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-16-16 [30]

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

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

Feasibility of the plan depends on the granting of a motion to value collateral of Capital One listed in Class 2C of the plan. Although the Debtors have filed, served, and set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j), the Debtors and Capital One entered into a stipulation on August 22, 2016, valuing the real property located at 6568 Huron Court, Magalia, California at $249,000.00. This valuation allows the Debtors to strip Capital One's second deed of trust on the property and treat that debt as unsecured. Therefore, the Trustee's objection regarding feasibility of the plan is resolved.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overrule, the motion to dismiss is denied, and the plan filed June 30, 2016, is confirmed.

The court shall enter an appropriate minute order.

26. 15-28551-B-13 DONCELLA LOGAN MOTION TO MODIFY PLAN
LBG-1 Lucas B. Garcia 7-22-16 [26]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated July 22, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order properly account for all payments made by the Debtor to date by stating the following: "The Debtor has paid a total of $20,520.00 to the Trustee through July 2016. Commencing August 25, 2016, monthly plan payments shall be $2,525.00 for one month then $2,750.00 for the remainder of the plan."

The modified plan filed on July 22, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

27. 15-20353-B-13 ERIKA SCHNITZLER-LOPEZ MOTION TO COMPEL
16-2009 SSW-1 8-3-16 [28]

SCHNITZLER-LOPEZ V. U.S.
DEPARTMENT OF EDUCATION ET AL

Tentative Ruling: The Defendant's Motion to Compel Plaintiff to Provide Responses to First Set of Interrogatories and Requests for Production of Documents has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(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 court's decision is to deny the motion without prejudice.

Defendant National Collegiate Student Loan Trust 2007-4 ("Defendant") moves to compel Debtor Erika Schnitzler-Lopez ("Debtor") to respond to interrogatories and request for production of documents ("Discovery Requests"). Defendant served Debtor with the Discovery Requests on March 30, 2016. Debtor's responses to the Discovery Requests were due 30 days thereafter, *see* Fed. R. Civ. P. 33/Fed. R. Bankr. P. 7033; Fed. R. Civ. P. 34/Fed. R. Bankr. P. 7034,, plus 3 additional days if the Debtor was served by mail. *See* Fed. R. Bankr. P. 9006(f). For the reasons explained below, Defendant's motion will be denied without prejudice.

When Defendant filed its motion to compel on August 3, 2016, the Debtor had not yet responded to the Discovery Requests. However, in her opposition filed on August 23, 2016, Debtor states she served responses on August 22, 2016. Therefore, Defendant's request to compel production is moot.

The court address one additional matter. Typically, objections to discovery requests are waived, including those based on attorney-client privilege and the work-product protection, where a party serves no response at all for a lengthy time after a response is due, where the party fails to provide a privilege log, and where the nature of the information requested suggests that an objection would normally be made. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (stating that "a failure to object to discovery requests within the time required constitutes waiver of any objection"). "[H]owever, waiver is generally imposed only where the party is unable to provide an explanation for its late response." *Callaway Golf Co. v. Corporate Trade Inc.*, 2011 WL 1642377 at *2 (S.D.N.Y. 2011) (citing cases).

Here, Debtor's responses to the Discovery Requests are unquestionably late. Since those responses are not submitted as exhibits the court is unaware if they include objections. To the extent the responses include objections, the court ordinarily would find the objections waived since the responses are nearly four months late. However, the court is persuaded that the Debtor has sufficiently explained the reason her responses are late and the court accepts the Debtor's explanation. Therefore, the court finds no waiver of any objection to the Discovery Requests to the extent the responses include objections.

That said, and notwithstanding the close of discovery on September 3, 2016, if the Discovery Requests include objections and the parties are unable to resolve those objections informally, the court will permit Defendant to file, serve, and set for hearing by no later than September 22, 2016, a further motion to compel. A hearing on any subsequent motion to compel shall be set on the date and time of the pre-trial conference in this adversary proceeding, i.e., November 1, 2016, at 11:00 a.m. Debtor shall have 14 days after service of any subsequent motion to compel to file and serve any response or opposition and Defendant shall have 7 days after service of any opposition by the Debtor to file a reply. The court will resolve any unresolved discovery issues at the time of the pre-trial conference.

The court shall enter an appropriate minute order.

28. 16-23555-B-13 CAMMY WOOD
JPJ-2 Jeffrey P. Guyton

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-28-16 [48]

DEBTOR DISMISSED: 08/05/2016

Final Ruling: No appearance at the September 6, 2016, hearing is required.

The Debtor's case having been dismissed on August 5, 2016, the objection is overruled as moot.

The court shall enter an appropriate minute order.

29. 16-23659-B-13 ANDREY KIRICHENKO MOTION TO CONFIRM PLAN
MS-1 Mark Shmorgon 7-15-16 [25]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

The Motion to Confirm 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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors 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 15, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

30. 16-24161-B-13 ALONZO/NORMA MUNGUIA — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 W. Steven Shumway — 8-11-16 [40]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 5, 2016. The confirmation hearing for the amended plan is scheduled for September 20, 2016. The earlier plan filed June 28, 2016, is not confirmed.

The court shall enter an appropriate minute order.

31. 16-23964-B-13 RUDY RUBIO
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-11-16 [20]

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

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

First, although the Debtor did not appear at the meeting of creditors set for August 4, 2016, the Debtor did appear at the continued meeting of creditors set for August 18, 2016, as required pursuant to 11 U.S.C. § 343.

Second, feasibility cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(3), (4), or (6) because the Debtor's attorney's fees are unclear. The plan and Disclosure of Compensation of Attorney for Debtors filed June 28, 2016, lists the total fee at $4,000.00 with $900.00 paid prior to the filing of the case. However, the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys filed June 28, 2016, lists a different total fee at $3,100.00 with $900.00 paid prior to the filing of the case.

The plan filed June 28, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

32. 16-25468-B-13 PSB-1 — ROBERT DANIEL AND DIANNA DANIEL — Pauldeep Bains — MOTION TO EXTEND AUTOMATIC STAY — 8-23-16 [8]

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 deny 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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtors's prior bankruptcy case was dismissed on August 5, 2016, after Debtors failed to make plan payments (case no. 15-20583, Dkt. 85). 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).

The Debtors assert that they were unable to make plan payments in the prior case since Joint Debtor's temporary jobs did not provide reliable, steady income. The Debtor's regular income as an I.T. specialist and church musician coupled with the Joint Debtor's temporary employment was not sufficient to make plan payments. In the present case, the Debtors assert that their new plan will succeed because they have taken on three foster children and Joint Debtor will gross a consistent foster care income of $3,900.00. However, foster care payments are not intended to be used to repay unsecured creditors. *See* 11 U.S.C. § 1325(b)(2); *see also Andinolfi v. Meyers (In re Andinolfi)*, 543 B.R. 612, 620 (9th Cir. BAP 2016). So excluding Debtors' newly-received foster care payments, the Debtors income in this second Chapter 13 case is even less than in the prior Chapter 13 case. Whereas in this case Debtor reports a $32.81 monthly increase, Joint Debtor no longer reports monthly income of $2,600.00. Compare dkt. 1, case no. 16-25468 with dkt. 1, case no. 15-20583. The $3,900.00 monthly foster care payments do not count. Therefore, the court fails to see any changed circumstances between (and after dismissal of) the first case and this case.

The Debtors have not 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 denied and the automatic stay is not extended for all purposes and parties.

The court shall enter an appropriate minute order.

33. 14-25175-B-13 JOHNNIE/KIMBERLY RHYNES — MOTION FOR COMPENSATION FOR
SNM-8 Stephen N. Murphy — STEPHEN N. MURPHY, DEBTORS' ATTORNEY
7-20-16 [105]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Stephen Murphy ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 57. Applicant now seeks additional compensation in the amount of $1,000.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 107.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant here does not address the foregoing standard. Instead, the applicant merely states that its office expended 15.3 hours on this case after its dismissal on April 13, 2016. Although the court recognizes that the Applicant's reasonable fee for services rendered would be $5,000.00 as stated in its motion and that the Applicant has reduced the fees requested to $1,000.00, the applicant nonetheless has not explained how this work was substantial and unanticipated. Accordingly, the motion for compensation is denied without prejudice.

The court shall enter an appropriate minute order.

34. 16-24775-B-13 CAROL HUMPHRIES
APN-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
8-4-16 [12]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the September 6, 2016, hearing is required.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2003 Rexair 3650RB motor home, VIN ending in 7435 (the "Vehicle"). The moving party has provided the Declaration of Cecilia Shelton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Shelton Declaration provides testimony that Debtor has not made 1 post-petition payment, with a total of $862.27 in post-petition payments past due. The Declaration also provides evidence that there is 1 pre-petition payment in default, with a pre-petition arrearage of $862.27.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $62,831.02, as stated in the Shelton Declaration, while the value of the Vehicle is determined to be $29,600.00, as determined by the Movant based on information derived form the NADA Guide. The Debtor does not list the Vehicle in her schedules and has instead voluntarily surrendered it and the Movant remains in possession of the Vehicle at this time.

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). The Debtor has voluntarily surrendered the Vehicle, and 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 Wells Fargo Bank, N.A., and 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.

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 court shall enter an appropriate minute order.

35. 16-24478-B-13 DANIEL/TRACY STYPA — MOTION TO VALUE COLLATERAL OF
MET-1 Mary Ellen Terranella — FIRST U.S. COMMUNITY BANK
Thru #36 — 8-19-16 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion for Order Valuing Collateral 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 set an evidentiary hearing to value the collateral.

The motion to value filed by Debtors to value the secured claim of First U.S. Community Credit Union ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 4425 Kristen Lee Court, Placerville, California ("Property"). Debtors seek to value the Property at a fair market value of $235,000.00 as of the petition filing date. As the owners, Debtors' 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.

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.

Opposition

Creditor has filed an opposition asserting that the Property has a value of $309,558.00 based on an initial broker's price opinion. Dkt. 35, Exh. C. Taking into account a first deed of trust at approximately $244,332.00 as asserted by the Debtors, there remains approximately $65,226.00 in equity available for Creditor's second deed of

trust to attach. Creditor asserts that it is owed no less than $52,029.31. The Creditor further requests that the court deny the motion or set an evidentiary hearing and allow Creditor to inspect the Property and obtain an appraisal.

Discussion

The Creditor has produced an initial broker's price opinion ("BPO") indicating that the value of the home is $309,558.00. Given that the BPO is based on comparable sales, the court finds the BPO more convincing than the Debtors' opinion of value. However, since this is not an actual appraisal taking into account any extensive repairs the home needs, the court will set an evidentiary hearing and permit Creditor to inspect the property an obtain an appraisal.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) shall be set for an evidentiary hearing.

The court shall enter an appropriate minute order.

36. 16-24478-B-13 DANIEL/TRACY STYPA — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
MET-2 Mary Ellen Terranella — 8-19-16 [20]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion for Order Valuing Collateral 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 set an evidentiary hearing to value the collateral for reasons stated at Item #35.

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 4425 Kristen Lee Court, Placerville, California ("Property"). Debtors seek to value the Property at a fair market value of $235,000.00 as of the petition filing date. However, First U.S. Community Bank Credit Union asserts that the value is #309,558.00, such that there would be approximately $65,226.00 in remaining equity after accounting a first deed of trust at approximately $244,332.00.

Wells Fargo Bank holds a third deed of trust against the property. Depending on the valuation of the property at Item #35, there may be equity in the property for Wells Fargo Bank to attach.

The court shall enter an appropriate minute order.

37. 16-24195-B-13 JESSICA NADOLSKI
JPJ-1 Robert C. Bowman

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-11-16 [20]

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

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

First, although the Debtor did not appear at the meeting of creditors set for August 4, 2016, the Debtor did appear at the continued meeting of creditors set for September 1, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Because of this, counsel shall proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $965.29, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $965.29 will also be due. 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).

Fourth, the plan will take approximately 90 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).

Fifth, feasibility of the plan depends on the granting of a motion to value collateral of One Main Financial for a 2000 Chevrolet Tracker. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

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

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

The court shall enter an appropriate minute order.

38. 16-22797-B-13 JAYWAUN CLARK MOTION TO CONFIRM PLAN
SJS-1 Scott J. Sagaria 7-20-16 [24]

Final Ruling: No appearance at the September 6, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 20, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.