

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: October 8, 2019

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 8, 2019 at 1:00 p.m.

1. [18-22000](#)-B-13 LOUIE/SHARDALAI GILLIGAN MOTION TO MODIFY PLAN
[RWH](#)-2 Ronald W. Holland 8-25-19 [[50](#)]

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

The court has before it a motion by Debtors Louie and Shardalai Gilligan ("Debtors") to confirm a first modified plan. Dkt. 50. The Chapter 13 Trustee ("Trustee") objects to confirmation of the modified plan and opposes the motion to confirm it on the following grounds:

(1) Debtors are delinquent in the amount of \$4,684, which represents approximately 1 plan payment. An additional payment of \$3,367 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

(2) The plan cannot be assessed for feasibility. Section 3.07 states that as of August 25, 2019, the trustee shall pay a total of \$25,281.10 to creditor Ditech Financial. However, the Trustee states that he has actually disbursed \$27,264.95 to this creditor. The Trustee has no opposition to this being corrected in the order confirming.

Debtors have filed a response to the Trustee's opposition. The Debtors state that they believed they were current on plan payments and state that they can be caught up on all payments, including the payment due October 25, 2019, by the end of October. Dkt. 61 at ¶¶ 2, 7. Debtors request that this matter be continued to November 5, 2019.

This court has consistently stated that it will not confirm or modify a plan if the debtor(s) is/are delinquent at the time of the confirmation/modification hearing and it has consistently denied confirmation/modification under those circumstances. The court will not deviate from its position in this case. A delinquency at the time of the confirmation/modification hearing demonstrates a lack of feasibility under § 1325(a)(6).

Debtors state they agree with the Trustee's accounting. Dkt. 61 at ¶ 1. Inasmuch as the Debtors request a continuance of the October 8, 2019, hearing in order to *become* current on plan payments by end of October 2019, the Debtors concede that they are delinquent and are likely to remain delinquent when their motion to modify is heard on October 8, 2019. *Id.* at ¶ 7.

October 8, 2019 at 1:00 p.m.

Debtors' request for a continuance to become current on plan payments is **DENIED**. If the Debtors remain delinquent when their motion to modify is heard on October 8, 2019, the motion will be **DENIED**. The Debtors' request for permission to make the October 2019 plan payment late, which is inherent in their request for a continuance, is also **DENIED**.

The court will enter a minute order.

2. [17-20513](#)-B-13 BEVERLY HUNTER
MJ-1 Dale A. Orthner

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-28-19 [[71](#)]

CHAMPION MORTGAGE COMPANY
VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Champion Mortgage Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 8830 Elm Avenue, Orangevale, California (the "Property"). Movant has provided the Declaration of Carlos Salas to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Salas Declaration states the Debtor has defaulted on payments owed to Force Place Insurance in the amount of \$1,533.00 for months 01/14/2019-01/14/2020 in violation of the Note and Deed of Trust.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The request for relief from stay as to the non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

Attorneys' Fees Requested

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

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

The court will enter a minute order.

3. [19-24313](#)-B-13 ANN CONRAD
Travis E. Stroud

MOTION TO CONFIRM PLAN
8-29-19 [[24](#)]

No Ruling

4. [19-24714](#)-B-13 EDDIE/CARYN GARDNER OBJECTION TO CONFIRMATION OF
[AP-1](#) Ted A. Greene PLAN BY HSBC BANK USA, NATIONAL
Thru #6 ASSOCIATION
9-10-19 [[28](#)]

Final Ruling

The case having been dismissed on September 25, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

5. [19-24714](#)-B-13 EDDIE/CARYN GARDNER OBJECTION TO CONFIRMATION OF
[APN-1](#) Ted A. Greene PLAN BY GATEWAY ONE LENDING AND
FINANCE
8-20-19 [[19](#)]

Final Ruling

The case having been dismissed on September 25, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

6. [19-24714](#)-B-13 EDDIE/CARYN GARDNER OBJECTION TO CONFIRMATION OF
[JPJ-1](#) Ted A. Greene PLAN BY JAN P. JOHNSON
9-12-19 [[31](#)]

Final Ruling

The case having been dismissed on September 25, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

Final Ruling

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

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

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

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

The court will enter a minute order.

Final Ruling

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

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

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

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

The court will enter a minute order.

9. [18-23124](#)-B-13 MONIQUE GARCIA MOTION TO MODIFY PLAN
[GEL](#)-1 Gabriel E. Liberman 8-29-19 [[19](#)]

No Ruling

10. [19-24625](#)-B-13 CASEY WOODBURY
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-12-19 [[25](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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

Second, the Debtor has not provided the Trustee with a copy of the federal 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 claim of Rushmore Loan Management Services is misclassified as a Class 4 claim, which is reserved for claims that are not delinquent when the case was filed. The Debtor testified at the meeting of creditors that the mortgage loan was delinquent when the case was filed. The Debtor has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(1).

Fourth, the Debtor has failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to income from rental party and/or the operation of a business.

The plan filed July 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

Final Ruling

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

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

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

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

The court will enter a minute order.

12. [19-24734](#)-B-13 WENDY SILVA
[JPJ](#)-1 Ronald W. Holland
Thru #13

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
9-12-19 [[30](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

Feasibility depends on the granting of Debtor's motion to value collateral of USE Credit Union ("Creditor"). The Creditor had submitted an opposition and the Debtor submitted a reply agreeing with the Creditor's valuation of the collateral. The court entered an order on September 17, 2019, valuing the collateral as proposed by USE Credit Union.

There being no other objection, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed September 17, 2019, is confirmed.

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

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

The court will enter a minute order.

13. [19-24734](#)-B-13 WENDY SILVA
[RPZ](#)-1 Ronald W. Holland

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK,
NATIONAL ASSOCIATION
9-12-19 [[33](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

Objecting creditor Wells Fargo Bank, National Association holds a deed of trust secured by the Debtor's residence. The creditor asserts \$14,745.30 in pre-petition arrearages but has not yet filed a proof of claim. Additionally, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 28, 2019, is confirmed.

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

minutes.

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

The court will enter a minute order.

14. [17-22237](#)-B-13 KEVONNA BROWN
[PGM](#)-3 Peter G. Macaluso

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE
8-23-19 [[64](#)]

Final Ruling

The objection has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection.

Debtor objects to the Notice of Mortgage Payment Change filed by Residential Bancorp ("Creditor"). Based on a December 2018 notice, Debtor's escrow payment decreased from \$784.21 to \$614.11. Creditor has now filed a notice to increase escrow payments from \$796.89 to \$798.46. Debtor contends that the Creditor has failed to explain when and how the escrow changed from \$614.11 to \$796.89. Additionally, the notices span overlapping months since the December 2018 notice is for payments from February 2019 through January 2020, and the May 2019 notice is for payments from August 2019 through July 2020. The Debtor also notes that there are increases in tax payments and hazard insurance without any explanation. Debtor's monthly mortgage payment will increase from \$1,409.10 to \$1,593.45.

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 Notices of Mortgage Payment Change filed May 29, 2019, and December 11, 2018, and Proof of Claim No. 6-1 filed by Creditor. The court finds no evidence or explanation as to how the Creditor computed its payment calculation.

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

Additionally, although the Debtor requests attorney's fees under California Code of Civil Procedure § 1717 and provide a billing statement (dkt. 67, exh. D), the Debtor has not carried the burden of proving the attorney's fees requested are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Therefore, the request for attorney's fees is denied without prejudice.

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

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

The court will enter a minute order.

15. [19-24544](#)-B-13 VINCENT JONES
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
9-12-19 [[31](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$250.00, which represents approximately 1 plan payment. An additional payment of \$250.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has claimed an interest in assets listed on Schedule A/B 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).

The plan filed August 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

16. [15-25350](#)-B-13 DIANA WILSON
[RJ-1](#) Richard L. Jare

MOTION TO MODIFY PLAN
9-3-19 [[30](#)]

No Ruling

17. [19-24550](#)-B-13 TEKAYA CALHOUN
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-12-19 [[20](#)]

Final Ruling

The case having been dismissed on September 27, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

18. [19-22955](#)-B-13 LILY SOK
[SW-1](#) Muoi Chea

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-19-19 [[17](#)]

ALLY BANK VS.

Tentative Ruling

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

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

Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Chevrolet Corvette (the "Vehicle"). The moving party has provided the Declaration of Jason Duthoy to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Duthoy Declaration states that there are in default for pre- and post-petition payments totaling \$11,226.79.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$37,696.92, as stated in the Duthoy Declaration, while the value of the Vehicle is determined to be \$21,175.00 as stated in Movant's papers.

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

The request for relief from stay as to the non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.
The court will enter a minute order.

19. [19-24658](#)-B-13 LORETTA/MELODY MOTION TO VALUE COLLATERAL OF
[DJC](#)-1 ANDERSON-BRUMIDIS TOYOTA MOTOR CREDIT CORPORATION
Thru #20 Diana J. Cavanaugh 9-10-19 [[14](#)]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Toyota Motor Credit at \$32,936.00.

Debtors' motion to value the secured claim of Toyota Motor Credit ("Creditor") is accompanied by Debtor's declaration. Debtors are the owners of a 2014 Toyota Sequoia Platinum Sport Utility 4DR ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$32,936.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value may be accepted as conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4.1 filed by Toyota Motor Credit Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$33,595.36. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$32,936.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

20. [19-24658](#)-B-13 LORETTA/MELODY OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 ANDERSON-BRUMIDIS PLAN BY JAN P. JOHNSON
Diana J. Cavanaugh 9-12-19 [[18](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors did not appear at the meeting of creditors set for September 5, 2019, and it is unknown whether the Debtors appeared at the continued meeting of creditors set for September 26, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors have not provided the Trustee with requested copies of certain items in connection with their business including, but not limited to, income tax returns for the 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, and proof of all required insurance and permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtors have not complied with 11 U.S.C. § 521.

Third, the Debtors have not provided the Trustee with a copy of the federal income tax return for the most recent tax year a return was filed, specifically either 2017 or 2018 since it is unclear whether the Debtors filed a tax return for these years. The Debtors have not complied with 11 U.S.C. § 521(e) (2) (A) (1).

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

The Trustee also objected to confirmation on grounds that feasibility depends on the granting of a motion to value for Toyota Motor Credit Corporation. However, that issue is resolved at Item #19.

For the first through fourth reasons stated above, the plan filed July 24, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

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 his and his non-filing spouse's payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtor has failed to disclose four prior bankruptcy filings and has failed to amend the petition as requested by the Trustee. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3) and has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(1).

Fifth, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Sixth, the plan fails to provide treatment for several creditors' priority debts that are listed in Schedule E/F. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Seventh, the plan fails to specify a minimum dividend to Class 7 unsecured nonpriority creditors at § 3.14. The plan does not comply with 11 U.S.C. § 1325(a)(4) since the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B and C, the total value of non-exempt property in the estate is \$95,306.00. The total amount that will be paid to unsecured creditors is \$0.00.

Eighth, the claim of Ocwen Loan Servicing should be classified as Class 1 in the plan since the Debtor testified at the meeting of creditors on August 29, 2019, that the mortgage was delinquent when the case was filed.

Ninth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$500.00, which represents approximately 1 plan payment. An additional payment of \$500.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed July 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

22. [19-21664](#)-B-13 RESPAL/NENITA MENDOZA MOTION TO CONFIRM PLAN
AF-4 Arasto Farsad 8-20-19 [[58](#)]
Thru #23
WITHDRAWN BY M.P.

Final Ruling

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will enter a minute order.

23. [19-21664](#)-B-13 RESPAL/NENITA MENDOZA OBJECTION TO CONFIRMATION OF
[ALS](#)-1 Arasto Farsad PLAN BY FARMERS INSURANCE GROUP
FEDERAL CREDIT UNION
9-4-19 [[66](#)]

Final Ruling

The Debtors having filed a notice of withdrawal for their motion to confirm third amended plan at Item #22, DCN AF-4, the objection to confirmation is overruled as moot.

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

The court will enter a minute order.

24. [19-24669](#)-B-13 RAMON CAPARAS
[AF-2](#) Arasto Farsad
Thru #25
WITHDRAWN BY M.P.

MOTION TO CONFIRM PLAN
8-20-19 [[22](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will enter a minute order.

25. [19-24669](#)-B-13 RAMON CAPARAS
[JPJ-1](#) Arasto Farsad

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-12-19 [[33](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on September 18, 2019. The confirmation hearing for the amended plan is scheduled for November 19, 2019. Furthermore, the earlier plan filed August 20, 2019, to which the Trustee's objection relates, was withdrawn by the Debtor.

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

The court will enter a minute order.

26. [17-27971](#)-B-13 MO TEYMOURI
GW-[5](#) Gerald L. White

MOTION FOR ORDER INSTRUCTING
CHASE BANK TO RELEASE FUNDS
HELD IN DEBTOR'S BANK ACCOUNTS
8-20-19 [[56](#)]

No Ruling

27. [18-26172](#)-B-13 TIA MCDANIELS
[PSE](#)-1 Pauldeep Bains

MOTION TO MODIFY PLAN
8-27-19 [[30](#)]

No Ruling

28. [18-20573](#)-B-13 JANAYA DUKE
[MJ-1](#) Richard L. Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-21-19 [[30](#)]

WELLS FARGO BANK, N.A. VS,
DEBTOR DISMISSED: 09/12/2019

Final Ruling

The case having been dismissed on September 12, 2019, the motion is denied as moot.

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

The court will enter a minute order.

29. [15-23679](#)-B-13 ABDUL MIXON
[MET](#)-2 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR
MARY ELLEN TERRANELLA, DEBTORS
ATTORNEY(S)
9-12-19 [[38](#)]

Tentative Ruling

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

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

Request for Additional Fees and Costs

Mary Ellen Terranella ("Applicant") substituted into this case on July 5, 2018, approximately three years after the petition was filed, and had contracted with the Debtor at a rate of \$350.00 per hour. The application reflects that Applicant spent 5.70 hours in post-confirmation services that were actual, reasonable, unanticipated, and necessary. Applicant's work was unanticipated since the Debtor did not know at the time of filing that his elderly parents would need his assistance in co-signing for the refinance of their home so as to alleviate a significant solar panel expense payable through their property taxes. Applicant seeks fees in the amount of \$1,995.00 and costs of \$25.74, for a total of \$2,020.74. Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 38.

The Debtor's prior attorney W. Scott de Bie had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling \$3,500.00. Dkt. 17.

Discussion

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

Applicant here substituted into this case approximately three years after the petition was filed. Applicant states that at the time she substituted into this case, it was unanticipated that Debtor's elderly parents would need his assistance in co-signing for the refinance of their home so as to alleviate a significant solar panel expense payable through their property taxes.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Additional Fees	\$3,500.00
Additional Costs and Expenses	\$ 25.74

The motion is ORDERED GRANTED for additional fees of \$3,500.00 and additional costs and expenses of \$25.74.

The court will enter a minute order.

30. [16-27379](#)-B-13 TIFFANY LOVE
[RJ-2](#) Richard L. Jare

MOTION TO MODIFY PLAN
9-3-19 [[54](#)]

No Ruling

31. [19-24779](#)-B-13 KEITH JOHNSON
[JPJ](#)-1 Ted A. Greene

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-12-19 [[17](#)]

Final Ruling

The case having been dismissed on October 3, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

32. [19-24481](#)-B-13 KIMBERLY BIGGS-JORDAN
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-30-19 [[18](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on September 17, 2019. The confirmation hearing for the amended plan is scheduled for November 5, 2019. The earlier plan filed July 31, 2019, is not confirmed.

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

The court will enter a minute order.

33. [19-24685](#)-B-13 EMILIA ARDELEAN
[MJH](#)-1 Stephan M. Brown

OBJECTION TO CONFIRMATION OF
PLAN BY CARMELITA MANCIA AND
HOURIA EL MASSIOUI
9-12-19 [[25](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Carmelita Mancía and Houria El Massioui ("Creditors") object to confirmation of the plan filed August 8, 2019. Creditors also acknowledge that the Debtor filed a first amended plan on September 9, 2019, and that the original plan cannot be confirmed. Therefore, the Creditors' objection is overruled as moot.

The Debtor filed a response stating that she will file a noticed motion to confirm the amended plan filed September 9, 2019, and requests 30 days to file this notice. The court finds the 30-day request to file a notice to be a delay prejudicial to creditors. Considering that the Debtor already has the first amended plan filed, there is no need to delay providing notice of the confirmation hearing date and time to creditors. The request for 30 days is denied. The amended plan filed September 9, 2019, shall be set and served by Friday, October 11, 2019, or the case may be dismissed on the Chapter 13 Trustee's ex parte application.

That being said, the plan filed August 8, 2019, is not confirmed.

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

The court will enter a minute order.

34. [19-24591](#)-B-13 LIONEL/SHIRLEY JACKSON OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Candace Y. Brooks PLAN BY JAN P. JOHNSON
9-12-19 [[24](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtors did not appear at the meeting of creditors set for September 5, 2019, and it is unknown whether the Debtors appeared at the continued meeting of creditors set for September 26, 2019, as required pursuant to 11 U.S.C. § 343.

The plan filed July 22, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

35. [19-24691](#)-B-13 KENNETH FALJEAN
[JPJ](#)-1 Gabriel E. Liberman
Thru #36

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-12-19 [[17](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$5,555.00, which represents approximately 1 plan payment. An additional payment of \$5,555.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed July 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

36. [19-24691](#)-B-13 KENNETH FALJEAN
[STH](#)-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY HARLEY-DAVIDSON
8-23-19 [[12](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Feasibility of the plan depends on the granting of a motion to value collateral of Harley-Davidson for a 2018 Harley-Davidson FLHTK Ultra Limited. 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 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

37. [17-25195](#)-B-13 JUSTINO SANCHEZ
[RJ-3](#) Richard L. Jare

MOTION TO EXTEND TIME
9-11-19 [[57](#)]

Final Ruling

The motion to extend time to respond to a Notice of Default and Application to Dismiss was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, there is no certificate of service indicating that the motion and supporting documents were served. See Local Bankr. R. 9014-1(d)(1), (e). Accordingly, the motion to extend time is denied without prejudice.

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

The court will enter a minute order.

Tentative Ruling

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

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

Request for Additional Fees and Costs

Matthew DeCaminada ("Applicant") substituted into this case on March 12, 2019, almost four years after the petition was filed, and had contracted with the Debtor at a rate of \$275.00 per hour. The application reflects that Applicant spent 10.9 hours in post-confirmation services that were actual, reasonable, unanticipated, and necessary. Applicant spoke with and met with Debtor to discuss her current case; reviewed documents filed by Debtor's former attorney's office; prepared, filed, and served a motion to approve trial loan modification of Debtor's mortgage on her primary residence; prepared, filed, and served a second modified plan and motion to confirm it; reviewed, prepared, filed, and served a motion to approve final loan modification; and prepared, filed, and served the instant application for attorney's fees and costs.. Applicant seeks fees in the amount of \$1,500.00, which is a reduction from \$2,567.50, and costs of \$0.00. Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 124.

The Debtors's prior attorney Scott J. Sagaria had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling \$4,000.00. Dkt. 78.

Discussion

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

Applicant here substituted into this case nearly four years after the petition was filed. Applicant states that at the time he substituted into this case, it was unanticipated that the Debtor would require a trial loan modification on her primary residence, the filing and confirmation of a second modified plan, and a subsequent final loan modification on her primary residence.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

Additional Fees

\$1,500.00

Additional Costs and Expenses \$ 0.00

The motion is ORDERED GRANTED for additional fees of \$1,500.00 and additional costs and expenses of \$0.00.

The court will enter a minute order.

39. [19-24699](#)-B-7 SHEIBA BOISSIERE OBJECTION TO CONFIRMATION OF
[EAT](#)-1 Lisa M. Edgar-Dickman PLAN BY NATIONSTAR MORTGAGE LLC
Thru #40 9-9-19 [[30](#)]

CONVERTED TO CH 7

Final Ruling

The case having been converted on September 24, 2019, the objection is overruled as moot.

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

The court will enter a minute order.

40. [19-24699](#)-B-7 SHEIBA BOISSIERE OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Lisa M. Edgar-Dickman PLAN BY JAN P. JOHNSON
9-12-19 [[33](#)]

CONVERTED TO CH 7

Final Ruling

The case having been converted on September 24, 2019, the objection is overruled as moot.

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

The court will enter a minute order.