

**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 22, 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 22, 2019 at 1:00 p.m.

1.	<u>19-24609</u> -B-13	JAMES HEISS	MOTION TO DISMISS CASE
	<u>MS-1</u>	Mark Shmorgon	9-20-19 [<u>48</u>]

No Ruling

October 22, 2019 at 1:00 p.m.

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2. 19-22312-B-13 AMELIA KROUSE
MWB-1 Mark W. Briden

MOTION TO CONFIRM PLAN
8-14-19 [32]

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.

3. 19-24412-B-13 KIT/JUDY WHITE
RAS-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK,
NATIONAL ASSOCIATION
9-16-19 [16]

Final Ruling

Wells Fargo Bank, National Association having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed July 15, 2019, will be confirmed.

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

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

The court will enter a minute order.

4. 18-23613-B-13 ADOR CALICA
EWV-235 Eric W. Vandermey
Thru #5

MOTION TO MODIFY PLAN
9-23-19 [26]

Final Ruling

The motion was not 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). Only 29 days' notice was provided. Therefore, the motion to modify is denied as moot.

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

The court will enter a minute order.

5. 18-23613-B-13 ADOR CALICA
EWV-236 Eric W. Vandermey

MOTION TO REFINANCE
9-23-19 [32]

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.

Debtor seeks to refinance his family residence commonly known as 2712 Cascade Circle, Fairfield, California ("Property") in order to lower his total housing cost by combining the first and second mortgages. At the time the case was filed, Rushmore Loan Services maintained the first mortgage on the Property in the amount of \$267,015.00 and Greentree Loan Servicing maintained the second mortgage on the Property in the amount of \$41,241.00 with arrears of \$5,000.00. The proceeds from the refinance will pay the full amount of the secured loans on the first and second mortgages.

Debtor asserts that the arrears for Greentree Loan Servicing, the balance owed on his motor vehicle, and all priority creditors have been paid in full. All filed claims for unsecured creditors will continue to get paid at 15% under the plan filed June 9, 2018.

Debtor states that he is unaware of any other liens against the Property but, to the extent there are any, they will be paid in full from the refinance proceeds.

The motion is supported by the Declaration of Ador Calica. The Declaration affirms Debtor's desire to obtain the post-petition financing.

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

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the

escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan filed June 9, 2018. 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 will be granted.

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

The court will enter a minute order.

6. 19-24814-B-13 DAVID/SHARON RICETTI MOTION TO CONFIRM PLAN
WLG-1 Nicholas Wajda 9-5-19 [14]

No Ruling

7. 19-23616-B-13 MARK BRASHLEY
WW-3 Mark A. Wolff

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
10-1-19 [52]

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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Midland Mortgage ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a new trial loan modification that will reduce Debtor's mortgage payment from the \$1,760.42 a month to \$1,708.49 for October through December 2019. The court had previously entered an order granting an earlier trial loan modification agreement with Creditor that had reduced Debtor's mortgage payment from \$1,918.18 to \$1,760.42 for months October through December 2019. Dkt. 49, 50. Upon completion of the new trial payments, Debtor's loan will be modified.

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

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

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

The court will enter a minute order.

8. 19-24016-B-13 SHARON PETERSEN MOTION TO CONFIRM PLAN
 WLG-2 Nicholas Wajda 8-20-19 [22]

CONTINUED TO 11/26/19 AT 1:00 P.M. TO BE HEARD AFTER MEETING OF CREDITORS SET
FOR 10/24/19.

Final Ruling

No appearance at the hearing is necessary. 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.

10. 19-23222-B-13 DAVID CARTER
MS-2 Mark Shmorgon

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CHERN LAW LLP FOR
MARK SHMORGON, DEBTORS
ATTORNEY(S)
10-1-19 [39]

Final Ruling

The court has before it an *Application for Attorney's Fees* filed by attorney Mark Shmorgon. Dkt. 39. For the reasons explained below, the court will continue the hearing on the fee application to permit Attorney Shmorgon to supplement the record and respond to the court's reasonableness concerns stated below.¹

Attorney Shmorgon's initial request for the \$4,000 "no-look" fee permitted by Local Bank. R. 2016-1 was denied without prejudice to the filing of a fee application under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and Local Bankr. R. 2016-1. Dkts. 25-26, 28. A prior § 330 fee application was also denied without prejudice for defective notice under Fed. R. Bankr. P. 2002(a)(6). Dkts. 36-37.

In this re-filed fee application, Attorney Shmorgon "seeks allowance and payment of \$4,000.00 in professional services and \$0.00 in expenses incurred during the period of April 23, 2019 through October 1, 2019[,]. . . for . . . 16.5 hours of Attorney labor[.]" Dkt. 39 at 2:1-6. Attorney Shmorgon states that his hourly rate is \$395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney Shmorgon reports that his tracked time is \$6,517.50; however, he is willing to discount his fees by \$2,517.50 to \$4,000.00 to honor his initial contract with debtor David Carter ("Debtor"). *Id.* at 4:27-5:2.

Attorney Shmorgon states in his declaration filed in support of the fee application that a record of his time provided to the Debtor in this case is attached as Exhibit A to the application. Dkt. 41 at 4:5-7. Exhibit A is a billing statement which includes pre-petition services that Attorney Shmorgon states he performed for the Debtor. Dkt. 42.

Although Attorney Shmorgon states that he performed pre-petition services for the Debtor, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern, LLP ("Chern Law") "collected \$2,250 in pre-petition attorney's fees." Dkt. 1. Chern Law is a law firm located in Chicago, Illinois. Dkts. 1 at SOFA #16, 21.²

Attorney Shmorgon holds himself out as a partner of Chern Law. Dkt. 20 (*passim*). The court has also previously recognized that Attorney Shmorgon submitted some evidence in the form of a declaration from Ryan Michael Galloway, Chern Law's Associate General Counsel and Vice President of Legal Delivery, in which Mr. Galloway states that Attorney Shmorgon is an equity holder in Chern Law. Dkts 21, 26 at fn. 2.

Taking judicial notice of its own records, the court notes that Attorney Shmorgon does not always file bankruptcy cases as a purported partner of Chern Law. Attorney Shmorgon filed 29 bankruptcy cases in the 60 days preceding the hearing on the present fee application. In 14 of those cases Attorney Shmorgon signed the petitions under the name (and as a purported partner of) Chern Law. In the remaining 15 cases Attorney Shmorgon signed the petitions under the name "The Law Offices of Mark Shmorgon" without

¹"Although no party has filed opposition to the Motion, the court has an independent duty to review all requests for compensation and to determine their reasonableness." *In re Beals*, 2007 WL 4287386, *1 (Bankr. E.D. Cal. 2007).

²Chern Law's Illinois and California status is explained in greater detail at docket 26. That explanation is incorporated herein by this reference.

any reference to any affiliation with Chern Law or his purported partnership status.³ Attorney Shmorgon provides no explanation how he may file bankruptcy cases as a partner of one law firm and simultaneously file bankruptcy cases as a separate and independent law firm. Resolution of that issue affects the reasonableness of the fees requested.

Therefore, in order to facilitate the court's determination of whether the fees that Attorney Shmorgon requests are reasonable under § 330, whether the requested fees exceed the reasonable value of services under § 329(b), and/or whether the applicable fee agreement should be cancelled or limited, *In re Sundquist*, 576 B.R. 858, 876-877 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019), the court **ORDERS** as follows:

(1) Attorney Shmorgon shall deliver to the courtroom deputy (not file):

a. all documents that relate to or otherwise govern the relationship between Chern Law, the Law Offices of Mark Shmorgon, and/or Attorney Shmorgon;

b. all documents that relate to or otherwise govern the fee structure or other fee arrangement(s) between Chern Law, The Law Offices of Mark Shmorgon, and/or Attorney Shmorgon;

c. all documents that relate to or govern Attorney Shmorgon's status as a partner of - or equity holder in - Chern Law; and

d. a list identifying all bankruptcy cases filed in the Eastern District of California from October 22, 2018, through and including October 22, 2019, in which Attorney Shmorgon signed the petition (i) as a partner of Chern Law; and (ii) as the Law Offices of Mark Shmorgon without reference to Chern Law or his purported partnership status.

(2) All documents shall be delivered to the courtroom deputy (not filed) by 3:00 p.m. on Tuesday, November 12, 2019.

(3) A further hearing on the fee application presently before the court is continued to November 26, 2019, at 1:00 p.m.

The court will enter a minute order.

³The cases filed solely under the name "The Law Offices of Mark Shmorgon" are as follows: Jorge Quintana, 19-26454; Constance Hurdle, 19-26412; James & Sandra Cal, 19-26403; Andrey Zubov, 19-26071; Lydia Stanko, 19-26017; Oleg & Irena Artemova, 19-26025; Pavel Deryabkin, 19-25851; Aaron Holcraft, 19-25799; Randall McElroy & Roger Albertson, 19-25770; Celynda Henningsen, 19-25619; Sergey & Alla Kostyuk, 19-25558; Crystal Nelson, 19-25460; Andrea Langley, 19-25483; Joseph Scroggins, 19-25403; Yekaterina Silva, 19-25354.

11. 19-23422-B-13 DANIEL ALTSTATT
And #24 Pro Se

MOTION TO CONFIRM AMENDED PLAN
9-13-19 [73]

Final Ruling

No appearance at the hearing is necessary.

Due to the resignation of Chapter 13 Trustee Jan P. Johnson, David Cusick has been designated Successor Trustee in this case effective October 1, 2019. The hearing on the motion to confirm plan filed September 13, 2019, is continued to November 19, 2019, at 1:00 p.m. Debtor Daniel Altstatt shall serve Successor Trustee David Cusick and the City of Sacramento at the addresses listed on the court's docket and claims registry by October 29, 2019.

The motion is ORDERED CONTINUED to November 19, 2019, at 1:00 p.m. for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Final Ruling

The court has before it an *Application for Attorney's Fees* filed by attorney Mark Shmorgon. Dkt. 37. For the reasons explained below, the court will continue the hearing on the fee application to permit Attorney Shmorgon to supplement the record and respond to the court's reasonableness concerns stated below.¹

Attorney Shmorgon's initial request for the \$4,000 "no-look" fee permitted by Local Bank. R. 2016-1 was denied without prejudice to the filing of a fee application under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and Local Bankr. R. 2016-1. Dkts. 23-25. A prior § 330 fee application was also denied without prejudice for defective notice under Fed. R. Bankr. P. 2002(a)(6). Dkts. 34-35.

In this re-filed fee application, Attorney Shmorgon "seeks allowance and payment of \$4,000.00 in professional services and \$0.00 in expenses incurred during the period of May 14, 2019 through October 1, 2019[,]. . . for . . . 14.2 hours of Attorney labor[.]" Dkt. 37 at 2:1-6. Attorney Shmorgon states that his hourly rate is \$395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney Shmorgon reports that his tracked time is \$5,609; however, he is willing to discount his fees by \$1,609 to \$4,000 to honor his initial contract with debtor Lucia Salas ("Debtor"). *Id.* at 4:27-5:2.

Attorney Shmorgon states in his declaration filed in support of the fee application that a record of his time provided to the Debtor in this case is attached as Exhibit A to the application. Dkt. 39 at 4:5-7. Exhibit A is a billing statement which includes pre-petition services that Attorney Shmorgon states he performed for the Debtor. Dkt. 40.

Although Attorney Shmorgon states that he performed pre-petition services for the Debtor, the *Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern, LLP ("Chern Law") "collected \$2,250 in pre-petition attorney's fees." Dkt. 1. Chern Law is a law firm located in Chicago, Illinois. Dkts. 1 at SOFA #16, 21.²

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Taking judicial notice of its own records, the court notes that Attorney Shmorgon does not always file bankruptcy cases as a purported partner of Chern Law. Attorney Shmorgon filed 29 bankruptcy cases in the 60 days preceding the hearing on the present fee application. In 14 of those cases Attorney Shmorgon signed the petitions under the name (and as a purported partner of) Chern Law. In the remaining 15 cases Attorney Shmorgon signed the petitions under the name "The Law Offices of Mark Shmorgon" without

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any reference to any affiliation with Chern Law or his purported partnership status.³ Attorney Shmorgon provides no explanation how he may file bankruptcy cases as a partner of one law firm and simultaneously file bankruptcy cases as a separate and independent law firm. Resolution of that issue affects the reasonableness of the fees requested.

Therefore, in order to facilitate the court's determination of whether the fees that Attorney Shmorgon requests are reasonable under § 330, whether the requested fees exceed the reasonable value of services under § 329(b), and/or whether the applicable fee agreement should be cancelled or limited, *In re Sundquist*, 576 B.R. 858, 876-877 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019), the court **ORDERS** as follows:

(1) Attorney Shmorgon shall deliver to the courtroom deputy (not file):

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c. all documents that relate to or govern Attorney Shmorgon's status as a partner of - or equity holder in - Chern Law; and

d. a list identifying all bankruptcy cases filed in the Eastern District of California from October 22, 2018, through and including October 22, 2019, in which Attorney Shmorgon signed the petition (i) as a partner of Chern Law; and (ii) as the Law Offices of Mark Shmorgon without reference to Chern Law or his purported partnership status.

(2) All documents shall be delivered to the courtroom deputy (not filed) by 3:00 p.m. on Tuesday, November 12, 2019.

(3) A further hearing on the fee application presently before the court is continued to November 26, 2019, at 1:00 p.m.

The court will enter a minute order.

³The cases filed solely under the name "The Law Offices of Mark Shmorgon" are as follows: Jorge Quintana, 19-26454; Constance Hurdle, 19-26412; James & Sandra Cal, 19-26403; Andrey Zubov, 19-26071; Lydia Stanko, 19-26017; Oleg & Irena Artemova, 19-26025; Pavel Deryabkin, 19-25851; Aaron Holcraft, 19-25799; Randall McElroy & Roger Albertson, 19-25770; Celynda Henningsen, 19-25619; Sergey & Alla Kostyuk, 19-25558; Crystal Nelson, 19-25460; Andrea Langley, 19-25483; Joseph Scroggins, 19-25403; Yekaterina Silva, 19-25354.

13. 19-22529-B-13 TINA ANDRADE
RK-3 Pro Se

MOTION BY RICHARD KWUN TO
WITHDRAW AS ATTORNEY
9-22-19 [57]

WITHDRAWN BY M.P.

Final Ruling

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

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

The court will enter a minute order.

Tentative Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

The plan filed September 13, 2019, does not contain the Debtor's original wet signature nor electronic signature. However, the Debtor filed an identical plan on September 16, 2019, that included a wet signature. The Trustee requests that the court confirm the plan filed September 16, 2019, with language in the order confirming clarifying that this is the plan being confirmed.

The Debtor filed a response of non-opposition to the Trustee's request.

The amended plan filed September 16, 2019, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

The court will enter a minute order.

15. 18-21640-B-13 DZMITRY/NATALLIA UHLIK MOTION TO MODIFY PLAN
EJS-3 Eric John Schwab 9-5-19 [67]

Tentative Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Section 3.07 of the modified plan adds post-petition arrears to Class 1 creditor Ditech. The arrearage amount is incorrectly listed at \$3,247.00 when it should be \$3,273.34, which represents delinquent payments for May and July 2019. The Trustee has no opposition to Debtors inserting appropriate language in an order modifying plan that states the correct post-petition arrearage amount owed to Ditech.

The Debtors filed a response of non-opposition to the Trustee's request.

The amended plan filed September 5, 2019, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

The court will enter a minute order.

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.

17. 19-24669-B-13 RAMON CAPARAS
AF-3 Arasto Farsad
Thru #18

MOTION TO VALUE COLLATERAL OF
HENRY PARAMO
9-17-19 [38]

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 Henry Paramo at \$0.00.

Debtor's motion to value the secured claim of Henry Paramo ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1232 Mercedes Drive, Roseville, California ("Property"). Debtor seeks to value the Property at a fair market value of \$498,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's 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).

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

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

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

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$762,000.00.

Creditor's second deed of trust secures a claim with a balance of approximately \$200,000.00. 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. 19-24669-B-13 RAMON CAPARAS MOTION TO VALUE COLLATERAL OF
AF-4 Arasto Farsad EXETER FINANCE, LLC
9-17-19 [43]

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 Exeter Finance, LLC at \$12,000.00.

Debtor's motion to value the secured claim of Exeter Finance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Truck ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (*In re Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 6-1 filed by Exeter Finance LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 31, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,991.16. 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 \$12,000.00. 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.

19. 17-27971-B-13 MO TEYMOURI
GW-6 Gerald L. White

MOTION FOR COMPENSATION FOR
GERALD L. WHITE, DEBTORS
ATTORNEY(S)
9-13-19 [61]

Final Ruling

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

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

Fees and Costs Requested

Gerald L. White ("Applicant"), the attorney to Chapter 13 Debtor, makes an interim request for the allowance of \$12,645.00 in attorney's fees and \$340.00 in costs for the court filing fee and court call fee. Applicant has been paid \$3,310.00 for pre-petition attorney's fees and \$310.00 in costs toward a court filing fee. The sum of \$2,965.76 has been paid by the Trustee and is held in trust.

The Debtor has opted out of the Guidelines (dkt. 1, p. 57). The period for which the fees are requested is for October 31, 2017, through August 21, 2019. An order approving compensation of Applicant was entered on January 19, 2018. Dkt. 20.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 65, exh. B, C.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy

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field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate and reasonable.

Applicant is allowed, by payment through trust and the plan, the following amounts as compensation to this professional in this case:

Attorney's Fees	\$12,645.00
Costs for court filing fee and call fee	\$ 340.00

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

The court will enter a minute order.

20. 19-23272-B-13 ALLEN FOWLER
SS-5 Scott D. Shumaker

MOTION TO CONFIRM PLAN
9-16-19 [58]

Final Ruling

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

There being no other objection to confirmation, the plan filed September 16, 2019, will be 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 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)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

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

The court will enter a minute order.

Final Ruling

The court has before it an *Application for Attorney's Fees* filed by attorney Mark Shmorgon. Dkt. 49. For the reasons explained below, the court will continue the hearing on the fee application to permit Attorney Shmorgon to supplement the record and respond to the court's reasonableness concerns stated below.¹

Attorney Shmorgon's initial request for the \$4,000 "no-look" fee permitted by Local Bank. R. 2016-1 was denied without prejudice to the filing of a fee application under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and Local Bankr. R. 2016-1. Dkts. 36-38. A prior § 330 fee application was also denied without prejudice for defective notice under Fed. R. Bankr. P. 2002(a)(6). Dkts. 46-47.

In this re-filed fee application, Attorney Shmorgon "seeks allowance and payment of \$4,000.00 in professional services and \$0.00 in expenses incurred during the period of February 28, 2019 through October 1, 2019[,]. . . for . . . 15.6 hours of Attorney labor[.]" Dkt. 49 at 2:1-7. Attorney Shmorgon states that his hourly rate is \$395.00 per hour. *Id.* at 2:21-22. Based on that hourly rate, Attorney Shmorgon reports that his tracked time is \$6,162; however, he is willing to discount his fees by \$2,162 to \$4,000 to honor his initial contract with debtor Gary Vitalie ("Debtor"). *Id.* at 4:27-5:2.

Attorney Shmorgon states in his declaration filed in support of the fee application that a record of his time provided to the Debtor in this case is attached as Exhibit A to the application. Dkt. 51 at 4:5-7. Exhibit A is a billing statement which includes pre-petition services that Attorney Shmorgon states he performed for the Debtor. Dkt. 52.

Although Attorney Shmorgon states that he performed pre-petition services for the Debtor, the *Amended Disclosure of Compensation of Attorney for Debtor(s)* states that Allen Chern, LLP ("Chern Law") "collected \$1,725 in pre-petition attorney's fees." Dkt. 18. Chern Law is a law firm located in Chicago, Illinois. Dkts. 1 at SOFA #16, 26.²

Attorney Shmorgon holds himself out as a partner of Chern Law. Dkt. 25 (passim). The court has also previously recognized that Attorney Shmorgon submitted some evidence in the form of a declaration from Ryan Michael Galloway, Chern Law's Associate General Counsel and Vice President of Legal Delivery, in which Mr. Galloway states that Attorney Shmorgon is an equity holder in Chern Law. Dkts 26, 36 at fn. 2.

Taking judicial notice of its own records, the court notes that Attorney Shmorgon does not always file bankruptcy cases as a purported partner of Chern Law. Attorney Shmorgon filed 29 bankruptcy cases in the 60 days preceding the hearing on the present fee application. In 14 of those cases Attorney Shmorgon signed the petitions under the name (and as a purported partner of) Chern Law. In the remaining 15 cases Attorney Shmorgon signed the petitions under the name "The Law Offices of Mark Shmorgon" without

¹"Although no party has filed opposition to the Motion, the court has an independent duty to review all requests for compensation and to determine their reasonableness." *In re Beals*, 2007 WL 4287386, *1 (Bankr. E.D. Cal. 2007).

²Chern Law's Illinois and California status is explained in greater detail in docket 36. That explanation is incorporated herein by this reference.

any reference to any affiliation with Chern Law or his purported partnership status.³ Attorney Shmorgon provides no explanation how he may file bankruptcy cases as a partner of one law firm and simultaneously file bankruptcy cases as a separate and independent law firm. Resolution of that issue affects the reasonableness of the fees requested.

Therefore, in order to facilitate the court's determination of whether the fees that Attorney Shmorgon requests are reasonable under § 330, whether the requested fees exceed the reasonable value of services under § 329(b), and/or whether the applicable fee agreement should be cancelled or limited, *In re Sundquist*, 576 B.R. 858, 876-877 (Bankr. E.D. Cal. 2017), *aff'd*, 2019 WL 994027 (9th Cir. BAP 2019), the court **ORDERS** as follows:

(1) Attorney Shmorgon shall deliver to the courtroom deputy (not file):

a. all documents that relate to or otherwise govern the relationship between Chern Law, the Law Offices of Mark Shmorgon, and/or Attorney Shmorgon;

b. all documents that relate to or otherwise govern the fee structure or other fee arrangement(s) between Chern Law, The Law Offices of Mark Shmorgon, and/or Attorney Shmorgon;

c. all documents that relate to or govern Attorney Shmorgon's status as a partner of - or equity holder in - Chern Law; and

d. a list identifying all bankruptcy cases filed in the Eastern District of California from October 22, 2018, through and including October 22, 2019, in which Attorney Shmorgon signed the petition (i) as a partner of Chern Law; and (ii) as the Law Offices of Mark Shmorgon without reference to Chern Law or his purported partnership status.

(2) All documents shall be delivered to the courtroom deputy (not filed) by 3:00 p.m. on Tuesday, November 12, 2019.

(3) A further hearing on the fee application presently before the court is continued to November 26, 2019, at 1:00 p.m.

The court will enter a minute order.

³The cases filed solely under the name "The Law Offices of Mark Shmorgon" are as follows: Jorge Quintana, 19-26454; Constance Hurdle, 19-26412; James & Sandra Cal, 19-26403; Andrey Zubov, 19-26071; Lydia Stanko, 19-26017; Oleg & Irena Artemova, 19-26025; Pavel Deryabkin, 19-25851; Aaron Holcraft, 19-25799; Randall McElroy & Roger Albertson, 19-25770; Celynda Henningsen, 19-25619; Sergey & Alla Kostyuk, 19-25558; Crystal Nelson, 19-25460; Andrea Langley, 19-25483; Joseph Scroggins, 19-25403; Yekaterina Silva, 19-25354.

24. 19-23422-B-13 DANIEL ALTSTATT
See Also #11 Pro Se

DEBTOR'S AMENDED CHAPTER 13
PLAN
8-6-19 [47]

Final Ruling

No appearance at the hearing is necessary.

Debtor Daniel Altstatt ("Debtor") filed an amended plan on August 6, 2019, but did not file any associated motion to confirm, notice of hearing, or certificate of service. Thereafter, Debtor filed an amended plan on September 13, 2019, the motion to confirm it which is heard at Item #11. Any request to confirm the earlier plan filed August 6, 2019, 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.