UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 1, 2016 at 1:00 p.m.

1.	14-22202-B-13	ROBERT/CAROLLYNN	MOTION TO REFINANCE
	SJS-3	PROVENZANO	10-12-16 [33]
		Scott J. Sagaria	

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

The court's decision is to grant the motion.

Debtors seek approval of a refinancing of their first mortgage loan secured by their residence located at 3604 Bainbridge Drive, North Highlands, California. American pacific Mortgage Corporation ("Creditor"), whose claim the plan provides for in Class 4, has agreed to the loan refinance that will reduce Debtors' monthly mortgage payment from $1,724.69 to approximately $1,097.00. The new principal balance of the note will be $204,912.00 and will include all amounts and arrearages that will be past due less payments made but not previously credited to the loan. The interest rate will be 4.000% and will begin to accrue on March 1, 2016. The new monthly payment will be due April 1, 2016, and the term si for 360 months.

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

The repayment of the new loan does not appear to unduly jeopardize the Debtors' performance of the plan confirmed on June 10, 2014. 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 court shall enter an appropriate minute order.

2. 16-22402-B-13 PLG-1 **Thru #3**

GREGORY BILLIE AND EUGENIA JONES-BILLIE
Steven A. Alpert

MOTION TO CONFIRM PLAN
9-9-16 [22]

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

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

The language in Section 6 - Additional Provisions of the plan that states "APPROVED attorney fees to be paid despite dismissal of the bankruptcy case" violates Local Bankr. R. 2016-1(c)(4).

The objection raised by Capital One, N.A. ("Creditor"), which holds a purchase money security interest in Debtor's 2012 Nissan Altima, has been resolved. The Debtors' first amended plan filed September 9, 2016, provides for Creditor's purchase money security interest in the amount of $14,414.59 and monthly dividend of $371.64.

Due to the language in Section 6 - Additional Provisions of the plan, the first amended plan does not with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate minute order.

3. 16-22402-B-13 PLG-1

GREGORY BILLIE AND EUGENIA JONES-BILLIE
Steven A. Alpert

COUNTER MOTION TO DISMISS CASE
10-5-16 [28]

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate minute order.

4.	16-25904-B-13 JPJ-1	ELIZABETH HUBER Gerald B. Glazer	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-10-16 [12]

CONTINUED TO 11/08/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED 341 MEETING SET FOR 11/3/2016 TO ALLOW DEBTOR TO SUBMIT PROOF OF HER SOCIAL SECURITY NUMBER TO THE TRUSTEE.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court shall enter an appropriate minute order.

5. 16-25708-B-13 CONSOLACION VELASCO — COUNTER MOTION TO DISMISS CASE
PLG-1 Stuart M. Price — 10-17-16 [22]
Thru #6

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate minute order.

6. 16-25708-B-13 CONSOLACION VELASCO — MOTION TO CONFIRM PLAN
PLG-1 Stuart M. Price — 9-20-16 [13]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,148.16, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,148.16 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home Mortgage including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is unable to comply with § 2.08(b) of the plan.

Third, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

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

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

The court shall enter an appropriate minute order.

7. 16-20613-B-13 URAL THOMAS
LBG-1 Lucas B. Garcia

MOTION TO RECONSIDER DISMISSAL OF CASE
10-14-16 [135]

DEBTOR DISMISSED: 09/28/2016

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

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

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the case. The case was dismissed after the Debtor failed to comply with the court's order dated June 21, 2016, which denied confirmation of the first amended plan and provided Debtor an additional 75 days to confirm a new plan. Dkts. 65, 67, 126. Debtor asserts his failure to prosecute the case was due to counsel's inadvertence caused by the remoteness of the order, the continuance of the September 6 confirmation hearing on the second amended plan to September 20 so that it could be heard in conjunction with the evidentiary hearing on a motion to value collateral of Wells Fargo Bank, N.A., as well as his counsel's need for attention to other simultaneous obligations. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtor did file and set for hearing a second amended plan within the 75 day deadline but the hearing was continued to a later date to be heard in conjunction with the evidentiary hearing. Although the Debtor and Wells Fargo did enter a stipulation as to the value of the 2012 Chevrolet Camaro, the second amended plan was not confirmable due to a need to increase plan payments. Additionally, the Debtor continued to perform under the plan as evidenced by his payment made on September 25, 2016. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect because Debtor's counsel was distracted by the continuance of the confirmation hearing to the same date as the evidentiary hearing and therefore did not ask for an extension of the court's original deadline. Vacating dismissal will not result in prejudice to any party.

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

The court shall enter an appropriate minute order.

8. 16-25614-B-13 BEVERLY BAKER HARRIS
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-7-16 [32]

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on October 11, 2016. The confirmation hearing for the amended plan is scheduled for December 13, 2016. The earlier plan filed August 25, 2016, is not confirmed.

The court shall enter an appropriate minute order.

9. 16-20118-B-13 LESTHER GASTELUM AND ALMA SAQUELARES
PGM-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN
9-19-16 [94]

Tentative Ruling: The Motion to Confirm Debtors' Second Amended Plan Filed on September 19, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors assert that they have provided the Trustee with all requested copies of business documents on October 18, 2016, via email and therefore have complied with 11 U.S.C. § 521. The documents requested by the Trustee were profit and loss statements for October 2015 to December 2015, bank account statements for July 2015 to December 2015, and copies of any required licenses or permits in connection with Debtor's business Saquelares Landscape and Irrigation.

Second, the Debtors have filed an amended Statement of Financial Affairs on October 21, 2016. The amended Statement of Financial Affairs provides completed information to question number 27.

Third, the Debtors have filed amended Forms 122C-1 and 122C-2 on October 21, 2016, which will allow the Trustee to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Assuming the Trustee's objections have been satisfied, the amended plan will comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court shall enter an appropriate minute order.

10. 16-23919-B-13 TONI HERRERA MOTION TO CONFIRM PLAN
SLE-1 Steele Lanphier 9-14-16 [33]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on September 14, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

11. 15-22024-B-13 GERALDINE HALL
MS-2 Mark Shmorgon
Thru #13

MOTION TO APPROVE LOAN MODIFICATION
9-27-16 [51]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

Debtor seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will increase Debtor's mortgage payment from the current $2,399.75 a month to $2,647.31 a month. Under the terms of the loan modification, the principle will be in the amount of $854,489.60, $255,989.60 of the new principal balance shall be deferred and shall be treated as non-interest bearing principal forbearance, and 100% of the deferred principal balance shall be eligible for forgiveness in equal installments over the next three years if Debtor remains current on her modified mortgage obligations. The loan is for 30 years and the interest rate of the modified loan will be 2.00001% for duration of the loan.

The motion is supported by the Declaration of Geraldine Hall. The Declaration states Debtor's assertion that, if this modification is approved, she can secure a fixed rate that will lead to the eventual payoff of her home and that is more certain than the current mortgage terms. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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 court shall enter an appropriate minute order.

12. 15-22024-B-13 GERALDINE HALL
MS-3 Mark Shmorgon

MOTION TO MODIFY PLAN
9-27-16 [38]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults

of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 27, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

13. 15-22024-B-13 GERALDINE HALL
MS-4 Mark Shmorgon

MOTION FOR COMPENSATION FOR MARK SHMORGON, DEBTOR'S ATTORNEY
9-27-16 [44]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Mark Shmorgon ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 24. Applicant now seeks additional compensation in the amount of $1,750.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 46.

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

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that Debtor Gerladine Hall and Toby Hall would divorce. This required counsel to find an amicable solution to resolve this bankruptcy. The

Halls decided to sever Mr. Hall from this bankruptcy case. Mr. Hall subsequently converted his severed case to a Chapter 7. Ms. Hall remains in this Chapter 13 case and has filed a first modified Chapter 13 plan on September 27, 2016, amended Schedules I and J, and an application to approve loan modification. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$1,750.00
Additional Costs and Expenses	$ 0.00

The court shall enter an appropriate minute order.

14. 15-24226-B-13 RACHEL DIAZ
SBT-1 Susan B. Terrado
Thru #15

MOTION TO AVOID LIEN OF PACIFIC SERVICE CREDIT UNION
9-13-16 [38]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Motion to Avoid Judicial Lien of Pacific Service Credit Union Pursuant to 11 U.S.C. § 522(f)(1) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Pacific Service Credit Union ("Creditor") against the Debtor's property commonly known as 385 Locust Drive, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $28,196.32. An abstract of judgment was recorded with Solano County on July 30, 2007, which encumbers the Property. All other liens recorded against the Property total $371,412.00 (from 1st DOT $300,097, 2nd DOT $70,000, and City of Vallejo code enforcement lien $1,315).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $385,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of $14,903.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate minute order.

15. 15-24226-B-13 RACHEL DIAZ
SBT-2 Susan B. Terrado

MOTION TO AVOID LIEN OF CALIFORNIA SERVICE BUREAU, INC.
9-29-16 [48]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Motion to Avoid Judicial Lien of Pacific Service Credit Union Pursuant to 11 U.S.C. § 522(f)(1) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v.*

Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of California Service Bureau, Inc. ("Creditor") against the Debtor's property commonly known as 385 Locust Drive, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,405.00. An abstract of judgment was recorded with Solano County on August 18, 2008, which encumbers the Property. All other liens recorded against the Property total $399,608.32 (from 1st DOT $300,097, 2nd DOT $70,000, City of Vallejo code enforcement lien $1,315, and Pacific Service Credit Union judgment lien $28,196.32).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $385,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of $14,903.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate minute order.

16. 14-29428-B-13 ROSANNE/STEPHEN AVILA MOTION TO MODIFY PLAN
HDR-6 Harry D. Roth 9-19-16 [96]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan Filed on September 19, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 19, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

17. 15-26933-B-13 PETE GARCIA
PGM-3 Peter G. Macaluso

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
9-12-16 [86]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change Filed by Wells Fargo Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc., Bear Sterns Mortgage Funding Trust 2006-AR2, Mortgage Pass-Through Certificates, Series 2006-AR2, As Serviced By Specialized Loan Servicing LLC, ("Wells Fargo") Filed April 27, 2016, has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to determine the matter at the scheduled hearing.

Debtor objects to the Notice of Mortgage Payment Change filed by Wells Fargo Bank, N.A. ("Creditor"). Creditor seeks a mortgage payment increase from $516.58 to $623.68 plus shortage payment of $133.88 for a total monthly escrow obligation of $757.56. Debtor asserts that the new escrow obligation should be increased to only $623.88. The Debtor further asserts that the escrow deficiency is provided for in the plan arrears and that the escrow analysis should start at zero (0).

The Notice of Mortgage Payment Change filed April 27, 2016, and Proof of Claim No. 1 filed by the Creditor and the exhibits filed by the Debtor have been reviewed by the court.

18. 16-24033-B-13 JOHN PETERSON MOTION TO CONFIRM PLAN
DBJ-2 Douglas B. Jacobs 9-15-16 [39]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on September 15, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

19. 16-24635-B-13 MICHAEL/CLARA LANGTON ORDER TO SHOW CAUSE
KHS-1 Scott J. Sagaria 9-25-16 [36]
Thru #20

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and 2015-3H IH2 Borrower L.P. will not be held liable for damages under § 362(k) for willful violation of the automatic stay.

The Order to Show Cause was issued due to 2015-3H IH2 Borrower L.P.'s filing of an unlawful detainer after the Debtors filed for bankruptcy in willful violation of the automatic stay of 11 U.S.C. § 362(a). Movant has submitted a written response stating that it did not willfully violate the stay because it did not have knowledge of Debtors' bankruptcy until one day after the unlawful detainer action was filed.

Movant provides evidence that it filed the unlawful detainer action on July 28, 2016, at 3:47 p.m., and not on July 29, 2016, as initially stated in the motion for relief from stay (dkt. 37) and supported by declaration (dkt. 15). Dkt. 42, exh. 2. Movant also provides evidence that Jessy Nanoff, an authorized agent for the Movant, did not become aware of the bankruptcy until Joint Debtor Clara Langton contacted Ms. Nanoff the day of July 29, 2016, as stated in Ms. Nanoff's email to Kimball, Tirey & St. John, LLP, on July 29, 2016, at 2:07 p.m. Dkt. 41, exh. 1. Upon learning of the Debtors bankruptcy, the firm asserts that it immediately ceased work on the case and filed a motion for relief from stay with this court. The Movant's response is supported by the Declarations of Calvin Clements and Jessy Nanoff.

The court finds that the Movant did not willfully violate the automatic stay and has shown cause for why it should not be held liable damages under § 362(k).

The court shall enter an appropriate minute order.

20. 16-24635-B-13 MICHAEL/CLARA LANGTON MOTION TO CONFIRM PLAN
SJS-1 Scott J. Sagaria 9-12-16 [22]

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

The court's decision is to determine the matter at the scheduled hearing.

2015-3 IH2 Borrower, L.P. conditionally accepts the proposed plan filed September 12, 2016, provided that the Debtors pay the September, October, and November 2016 rents totaling $6,030.00 within a short period of time after the plan is approved.

The Debtors' plan is silent as to payment of post-petition rent of October and November 2016. The plan states only that the August rent of $2,010.00 will be paid in installments of $250.00 and that the September rent of $2,010.00 will be paid sometime in September.

21. 11-43238-B-13 LC-2 — TIMOTHY/CHERYL WHITTEMORE — Lorraine W. Crozier — MOTION TO VALUE COLLATERAL OF GRASSY MEADOW II, LLC — 9-27-16 [58]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

The court's decision is to value the secured claim of Cadles of Grassy Meadow II, L.L.C. at $0.00.

Debtors' motion to value the secured claim of Cadles of Grassy Meadow II, L.L.C. ("Creditor") is accompanied by the Declaration of Cheryl A. Whittemore. Debtors are the owners of the subject real property commonly known as 4118 Segundo Road, Beckwourth, California ("Property"). Debtors seek to value the Property at a fair market value of $450,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is 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 which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $539,433.00. Creditor's second deed of trust secures a claim with a balance of approximately $99,066.00. 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 court shall enter an appropriate minute order.

22. 12-26138-B-13 MOLLIE PEARSON
SDB-4 W. Scott de Bie

MOTION TO MODIFY PLAN
9-16-16 [80]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming reduce the payment of attorney's fees to $45.68, as stated in Debtor's response and accepted by Debtor's attorney, so that the plan payment in the amount of $292.00 will equal the aggregate of the Trustee's fees, monthly payment for administrative expenses, and monthly dividend payable on account of the Class 2 secured claim.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

23. 15-21742-B-13 MARCELLO/GEORGIA MARTINEZ MOTION TO MODIFY PLAN
MC-4 Muoi Chea 9-22-16 [66]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 22, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

24. 12-34244-B-13 EMANUEL/DANIELLE DOUGLAS — MOTION TO APPROVE LOAN MODIFICATION
EGS-1 Mary Ellen Terranella — 10-1-16 [51]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Application to Approve Loan Modification with Bayview Loan Servicing, LLC Re: Debtors' Principal Residence Located at 10009 Wyatt Ranch Way, Sacramento, CA 95829 has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Bayview Loan Servicing, LLC ("Movant") seeks court approval of Debtors' Home Affordable Modification Agreement with Movant. Movant's claim the plan provides for in Class 4, has agreed to a loan modification which will increase Debtors' mortgage payment from the current $2,412.00 a month to $2,728.07 a month. Under the terms of the loan modification, the principle will be in the amount of $627,949.42, $122,035.27 of the new principal balance shall be deferred and shall be treated as non-interest bearing principal forbearance, and 100% of the deferred principal balance shall be eligible for forgiveness provided that Debtors are not in default on any new payments such that the equivalent of 3 full monthly payments is due and unpaid on the last day of any month, on each of the first, second, and third anniversaries of June 1, 2016. The loan is for 31 years and the interest rate of the modified loan will be 3.125% for duration of the loan.

The motion is supported by the Declaration of Mildred Alabre, the bankruptcy document coordinator of Bayview Loan Servicing, LLC. The Declaration affirms Debtors' desire to obtain the post-petition financing and is supported by the Home Affordable Modification Agreement signed by the Debtors on August 26, 2016, at Exhibit D. Opposition has not been filed by the Debtors, Trustee, or any interested party.

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

The court shall enter an appropriate minute order.

25. 16-24853-B-13 JOSEPH BOTSCH
MEV-1 Marc Voisenat

MOTION TO CONFIRM PLAN
9-12-16 [26]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on September 8, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

26.	16-25658-B-13 JPJ-1	JOHN/MARGARET FRAUMENI Robert S. Gimblin	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-10-16 [13]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on October 14, 2016. The confirmation hearing for the amended plan is scheduled for December 13, 2016. The earlier plan filed August 26, 2016, is not confirmed.

The court shall enter an appropriate minute order.

27. 16-25261-B-13 SHAMEKA BATTE
JPJ-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-3-16 [25]

DISMISSED: 10/28/2016

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The case having been dismissed on October 28, 2016, the objection to confirmation of plan is dismissed as moot. The matter is removed from the calendar.

The court shall enter an appropriate minute order.

28. 16-25262-B-13 BOBBY/KRISTINA JOHNSON
JPJ-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-3-16 [25]

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

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,680.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,680.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, although the Debtors did not appear at the first meeting of creditors held on September 29, 2016, the Debtors did appear at the continued meeting of creditors held on October 20, 2016, as required pursuant to 11 U.S.C. § 343.

Third, feasibility of the plan depends on the granting of a motion to value collateral for Consumer Portfolio Services. The hearing on the motion was set for October 4, 2016, and the court granted that motion.

If the Debtors have not cured their delinquency, the plan filed August 24, 2016, will be deemed to not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be sustained and the plan will not be confirmed.

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

The court shall enter an appropriate minute order.

29. 16-25763-B-13 CRYSTAL COULSTON
ETL-1 Matin Rajabov
Thru #30

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
10-6-16 [21]

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

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

This confirmation hearing set for November 1, 2016, relates to the plan filed September 13, 2016. The Debtor filed a first amended plan on September 20, 2016, but did not set a separate confirmation hearing for the first amended plan, file a motion to confirm it, or provide notice of it. Although the first amended plan supercedes the original plan, the first amended plan is not properly before the court.

But even if the first amended plan was properly before the court, it would be denied. The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $255,233.31 in pre-petition arrearages. Claim #1, p. 4. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The first amended plan filed September 20, 2016, would not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate minute order.

30. 16-25763-B-13 CRYSTAL COULSTON
JPJ-1 Matin Rajabov

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-10-16 [25]

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

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

The Trustee's objection to confirmation relates to the plan filed September 13, 2016. However, as the Trustee notes in its objection, the Debtor subsequently filed a first amended plan on September 20, 2016. Therefore, the Trustee's objection and motion to dismiss pertaining to the plan filed September 13, 2016, are overruled as moot.

Nonetheless, the first amended plan filed September 20, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #29. The first amended plan is not confirmed.

The court shall enter an appropriate minute order.

31. 15-29869-B-13 MISTY HAYS
RWC-1 Rupert Corkill

MOTION TO CONFIRM PLAN
9-21-16 [37]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Debtor(s) [sic] Motion to Confirm Amended Chapter 13 Plan was not set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Only 41 days' notice was provided.

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

The court shall enter an appropriate minute order.

32. 16-25970-B-13 EUGENE NIERI
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-7-16 [15]

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

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

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

The plan filed September 7, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

33. 16-24973-B-13 JPJ-1 **Thru #34**

MARTIN/ANNETTE SNEZEK
Steele Lanphier

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-22-16 [26]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on October 6, 2016. The confirmation hearing for the amended plan is scheduled for December 13, 2016. The earlier plan filed August 22, 2016, is not confirmed.

The court shall enter an appropriate minute order.

34. 16-24973-B-13 SLE-1

MARTIN/ANNETTE SNEZEK
Steele Lanphier

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
9-22-16 [29]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

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

Debtors motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by the Declaration of Martin John Snezek. Debtors assert that they are the owners of personal property but do not explain what their personal property consists of. The motion states that the unidentified personal assets are valued at $2,970.00 yet the Declaration states that they are valued at $3,310.00.

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

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at

the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The Debtors do not explain the composition of their personal property that allegedly secures the claim of Internal Revenue Service. Nor have the Debtors explained the age and condition of their personal property for the court to determine the price a retail merchant would charge. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court shall enter an appropriate minute order.

35. 12-36675-B-13 DOUGLAS/JULIETTE AXT
MMM-5 Mohammad M. Mokarram

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
9-30-16 [64]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Motion to Value Collateral of the Bank of New York Mellon Trust Company, N.A. as Trustee for the GMAC Home Equity Loan Trust 2006-HSA4 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Bank of New York Mellon Trust Company, N.A. as Trustee for the GMAC Home Equity Loan Trust 2006-HSA4 at $0.00.

Debtors' motion to value the secured claim of Bank of New York Mellon Trust Company, N.A. as Trustee for the GMAC Home Equity Loan Trust 2006-HSA4 ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1310 Barrington Lane, Lincoln, California ("Property"). Debtors seek to value the Property at a fair market value of $365,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is 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 which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 24 filed by Green Tree Servicing, LLC is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $462,506.00. Creditor's second deed of trust secures a claim with a balance of approximately $95,611.00. 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 court shall enter an appropriate minute order.

36.	11-35676-B-13 PGM-1	FRED/CAROL SALES Peter G. Macaluso	MOTION TO SUBSTITUTE FRED M. SALES FOR CAROL M. SALES AS SUCCESSOR-IN-INTEREST AND/OR MOTION FOR THE COURT TO WAIVE THE 11 U.S.C. 1328 REQUIREMENT FOR DEBTOR, CAROL M. SALES 9-23-16 [59]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

The court's decision is to substitute Fred M. Sales who is appointed representative of the estate, continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Fred M. Sales gives notice of death of his wife and Co-Debtor Carol M. Sales and requests the court substitute Fred M. Sales in place of his deceased spouse for all purposes within this Chapter 13 proceeding. The death certificate for Carol M. Sales has been provided as an exhibit in support of this motion.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution

> originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

The Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors, and that Carol M. Sales should be waived of the 11 U.S.C. § 1328 requirements. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

The court shall enter an appropriate minute order.

37. 13-35777-B-13 SIDNE ALLINGER — OBJECTION TO CLAIM OF NATIONSTAR MORTGAGE LLC, CLAIM NUMBER 13
JPJ-2 Lucas B. Garcia — 9-6-16 [120]

Tentative Ruling: The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Nationstar Mortgage LLC filed a response to the Trustee's objection.

The court's decision is to sustain the objection to Claim No. 13 of Nationstar Mortgage LLC and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Nationstar Mortgage LLC ("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $257,469.81. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was April 23, 2014. Notice of Bankruptcy Filing and Deadlines, Dkt. 9. The Creditor's Proof of Claim was filed April 10, 2015.

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

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

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

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

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

The court shall enter an appropriate minute order.

38. 16-25579-B-13 JEFFREY ESSLINGER
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-11-16 [14]

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

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

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Debtor's monthly disposable income is $747.30. The plan proposes to pay only $4,481.34 to unsecured non-priority creditors. The Debtor must pay no less than $44,838.00 to unsecured non-priority creditors.

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

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

The court shall enter an appropriate minute order.

39. 15-25980-B-13 ROBERT/ANASTASIA LEE — MOTION TO APPROVE LOAN MODIFICATION
CK-2 Catherine King — 9-22-16 [27]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Debtors having filed a Notice of Withdrawal of the Motion to Approve Loan Modification, 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 court shall enter an appropriate minute order.

40. 16-25488-B-13 HARLAN/PEGGY HOYT
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-10-16 [19]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed August 19, 2016, will be confirmed.

The court shall enter an appropriate minute order.

41. 11-29591-B-13 BRIAN SAECHAO
16-2030 PLC-1

MOTION FOR SUMMARY JUDGMENT
9-23-16 [42]

SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

Tentative Ruling: The Motion for Partial Summary Judgment Pursuant to Fed. R. Civ. P § 56 and Fed. R. Bankr. P. § 7056 has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion for summary judgment.

Presently before the court is a motion for partial summary judgment filed by Plaintiff Brian K. Saechao. Plaintiff contends there are no disputed factual issues related to the balance of his loan owed to Defendants Federal National Mortgage Association and Seterus, Inc. and, as a matter of law, he is entitled to a judgment declaring the loan balance to be the balance stated in a 2014 settlement agreement between the parties. The court disagrees. Therefore, for the reasons stated below, Plaintiff's motion for partial summary judgment will be denied.

Background

Only those facts pertinent to the present motion are recited. Additional details concerning this adversary proceeding are stated in the Civil Minutes filed on July 19, 2016, at Dkt. No. 26.

There are two documents relevant to the disposition of the present motion. The first is a loan modification dated November 3, 2010. In relevant part, ¶ 3 of the loan modification states as follows:

> A. The new Maturity Date will be: August 1, 2050.
>
> B. [. . .]. The new principal balance of my Note will be $357,417.44 (the "New Principal Balance")[.]
>
> C. $34,861.10 of the New Principal Balance shall be deferred (the "Deferred Principal Balance") and I will not pay interest or make monthly payments on this amount. The New Principal Balance less the Deferred Principal Balance shall be referred to as the "Interest Bearing Principal Balance" and this amount is $322,556.34.
>
> [. . .]
>
> The total remaining balance that will be due at the maturity of my loan, which will be the total of my Deferred Principal Balance and other Deferred amounts, will be $34,861.10.

The second document is a settlement agreement that resolved an earlier adversary proceeding between the parties, Adv. No. 13-2368. The settlement agreement was approved by an order entered on August 22, 2014. Relevant here is ¶ 6 of the settlement agreement which states as follows:

> The Parties agree that as of February 28, 2014, the current principal balance of the loan between the Parties is $298,933.38, the current escrow balance is a surplus of $2,160.63, and that the next escrow analysis cannot be performed until after July 1, 2014. Further, it is agreed that the loan is current and there are no outstanding late fees or other amounts due and owing as of the Effective Date.

There was no appeal from the order approving the settlement agreement. Therefore, according to ¶ 1, the settlement agreement became effective when the order approving it became final, *i.e.*, fourteen days after August 22, 2014, or September 6, 2014.

Legal Standard

A court must grant a motion for summary judgment "if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. A motion for summary judgment calls for a "threshold inquiry" into whether a trial is necessary at all, that is, whether "any genuine factual issues . . . properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court does not weigh evidence or assess the credibility of witnesses; rather, it determines which facts the parties do not dispute, then draws all inferences and views all evidence in the light most favorable to the nonmoving party. *See Id.* at 255; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (quotation omitted).

The moving party bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The nonmoving party must, in response, "go beyond the pleadings" and "designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (quotation marks omitted). The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248.

Discussion

The court previously stated that the Plaintiff's loan balance is a question of fact. The Civil Minutes appended to the order granting in part and denying in part Defendants' earlier motion to dismiss state that "the accuracy of the loan balance is a factual question[.]" *See* Dkt. 26 at p.2. Neither party disputed or questioned that statement. Nevertheless, the court now reaffirms its earlier conclusion.

Not only is the Plaintiff's actual loan balance a factual question, but, it is a disputed one. A hotly disputed one for that matter. That dispute involves two documents and four different terms that all purport to in some way define the same loan balance.

The loan modification contains three defined terms that relate to Plaintiff's loan balance: (i) "New Principal Balance" ($357,417.44); (ii) "Deferred Principal Balance" ($34,861.10); and (iii) "Interest Bearing Principal Balance" ($322,556.34 which is the New Principal Balance less the Deferred Principal Balance). The settlement agreement uses a completely different term to refer to Plaintiff's loan balance, *i.e.*, "current principal balance," which it defines at $298,933.38 as of February 28, 2014, and includes "no outstanding late fees or other amounts due and owing as of the Effective Date."

Interestingly, although the loan modification existed when the settlement agreement was drafted and approved, the settlement agreement does not mention the loan modification. Yet, somehow, the court is asked to conclude, as a matter of law, that the parties intended the term "current principal balance" to replace (or displace) the three completely different terms in the loan modification that pertain to the Plaintiff's loan balance. That is quite a leap. In any event, aside from the absence of any logical explanation as to how one term in the settlement agreement replaces (or displaces) three terms in the loan modification when the former does not refer to the latter, the settlement agreement is susceptible to more than one reasonable

interpretation.

For example, as Plaintiff suggests, the term "current principal balance" in the settlement agreement could mean a reduced and fixed principal balance that includes nothing more, *i.e.*, no Deferred Balance and no other late fees or charges, as of the Effective Date. In other words, under Plaintiff's interpretation, on and after September 6, 2014, Plaintiff no longer owed Defendants the Deferred Balance or anything else over and above $298,933.38.

Alternatively, as Defendants point out, the "current principal balance" does not include the Deferred Principal Balance. This too is valid interpretation. Inasmuch as the Deferred Principal Balance was not due until August 1, 2050, it was not "due and owing as of the Effective Date." And for that reason, it was not (and did not need to be) included in the "current principal balance." In other words, the settlement agreement may be read to state that what was "due and owing as of the Effective Date" was only the Interest Bearing Principal Balance and is silent as to the Deferred Principal Balance.

In either case, the settlement agreement in general, and the term "current principal balance" in particular, are sufficiently ambiguous with regards to Plaintiff's actual loan balance which means intent is relevant and summary judgment is inappropriate. *See Wilcox v. Lloyds TSB Bank, PLC*, 2016 WL 593458 (February 11, 2016) (stating Ninth Circuit standard); *see also Norton Sound Health Corp. v. Thompson*, 55 Fed. Appx. 835, 2003 WL 264717 at *2 (9th Cir. 2003) (noting that provision of a contract is ambiguous if it is reasonably susceptible of more than one construction or interpretation and ambiguity, in turn, creates a question of fact as to the parties' intent making summary judgment inappropriate); *American Medical Intern., Inc. v. Valliant*, 74 F.3d 1245 (9th Cir. 1996) (summary judgment properly denied "[b]ecause the dispute revolves around the intent of the parties in agreeing on these sections, summary judgment was inappropriate.")

Therefore, based on the foregoing, Plaintiff's motion for partial summary judgment is denied.[1]

The court shall enter an appropriate minute order.

[1]Finding a disputed material factual issue that precludes summary judgment, the court need not reach the parties' remaining arguments.

42. 11-37392-B-13 RAC-4 **Thru #43**

CHARLIE/CHRISTINA BOGGS
Richard A. Chan

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT
9-28-16 [72]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of State of California Employment Development Department ("Creditor") against the Debtors' property commonly known as 1718 Deborah Lane, Marsyville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,282.50. An abstract of judgment was recorded with Yuba County on June 18, 2010, which encumbers the Property. All other liens recorded against the Property total $197,759.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $90,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate minute order.

43. 11-37392-B-13 RAC-5

CHARLIE/CHRISTINA BOGGS
Richard A. Chan

MOTION TO AVOID LIEN OF CITIFINANCIAL SERVICES, INC.
9-28-16 [77]

Final Ruling: No appearance at the November 1, 2016, hearing is required.

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

pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citifinancial Services, Inc. ("Creditor") against the Debtors' property commonly known as 1718 Deborah Lane, Marsyville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $8,471.31. An abstract of judgment was recorded with Yuba County on June 18, 2010, which encumbers the Property. All other liens recorded against the Property total $199,041.50.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $90,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court shall enter an appropriate minute order.

44. 16-25492-B-13 JAMES STRAIN
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-7-16 [16]

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

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

First, the Debtor lacks sufficient income to make monthly plan payments of $1,605.00 because the Debtor testified under oath at the meeting of creditors held October 6, 2016, that he does not receive $3,200.00 in monthly contributions from Crystal White. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Third, the plan payment in the amount of $1,605.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,631.38. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, the plan will take approximately 71 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fifth, the Debtor has not disclosed on question number 18 of the Statement of Financial Affairs the transfer of his interest in real property located at 167 Retama, Kyle, Texas to Crystal White within the 2-year period prior to the filing of the petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. It does not appear the plan was proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3). The Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521 (a)(1).

The plan filed August 19, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate minute order.

45.	16-25992-B-13 JPJ-1	EMANUEL/ELIZABETH RODRIGUES Gerald B. Glazer	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-7-16 [19]

CONTINUED TO 12/13/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE DEBTORS' MOTION TO VALUE COLLATERAL FOR SANTANDER CONSUMER USA/CFAM FINANCIAL SERVICES.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court shall enter an appropriate minute order.

46. 16-26594-B-13 EULANDA MERRIWEATHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-1 Pro Se — 10-11-16 [10]

TUSCARO STERLING, LLC. VS.

Final Ruling: No appearance at the November 8, 2016, hearing is required.

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

The court's decision is to grant the motion for relief from stay and order Tuscaro Sterling, LLC, dba Tuscaro Apartments ("Movant") to show cause for why it should not be sanctioned for willful violation of 11 U.S.C. § 362(a)(1) and (a)(6).

Movant seeks relief from the automatic stay of 11 U.S.C. § 362(a) to commence and/or continue an unlawful detainer action against Debtor Eulanda K. Merriweather ("Debtor") and to recover possession of the premises located at 4400 Truxel Road #071, Sacramento, California ("Property"). Debtor is a tenant of the Property pursuant to an 11-month written lease agreement that terminates on February 28, 2017. Debtor has defaulted on the lease agreement, both pre- and post-petition.

Movant filed a pre-petition unlawful detainer and rent collection action against the Debtor on August 24, 2016. Debtor filed her Chapter 13 petition on October 3, 2016. Trial in the unlawful detainer and rent collection action was also set - and proceeded - on October 3, 2016. Movant acknowledges that it "learned of the [Debtor's] bankruptcy filing immediately prior to the court Trial [sic]" but that "[t]he state court proceeded with the Trial [sic] and entered Judgment [sic] in favor of Movant" nonetheless.

For the reasons explained below, **(1)** Movant's request for relief from the automatic stay of § 362(a) to commence and/or continue unlawful detainer proceedings will be granted under § 362(d)(1) to the extent permitted below and **(2)** Movant will be ordered to show cause why it should not be sanctioned under § 362(k) in the amount of $2,500.00 payable to the Debtor for its admitted violation of the automatic stay of §§ 362(a)(1) and (6).

The 14-day stay of Fed. R. Bankr. P. 4001(a) applicable to the § 362(a) relief is not waived.

Discussion

Stay relief will be granted to permit Movant to recover the Property from the Debtor. The Debtor has defaulted in the post-petition payment of rent under her lease agreement, and the Debtor's plan filed October 17, 2016, does not propose to assume the Property lease and cure the existing default. Therefore, cause exists under § 362(d)(1) and the automatic stay of § 362(a) will be terminated. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived.

The court also sua sponte addresses Movant's admission that it willfully violated the automatic stay of § 362(a). The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the

commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[,]" 11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

Movant violated the automatic stay by prosecuting the unlawful detainer and rent collection action against the Debtor post-petition. That violation renders the trial and the judgment entered by the state court following that trial void. *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009); *see also Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081-82 (9th Cir. 2000) (en banc).

Movant also willfully violated the stay by prosecuting the unlawful detainer and rent collection action against the Debtor knowing that the Debtor filed bankruptcy, having admitted that it was so informed before the trial commenced. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003)); *see also Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002) ("Consistent with the plain and unambiguous meaning of the statute, and consonant with Congressional intent, we hold that § 362(a)(1) imposes an affirmative duty to discontinue post-petition collection actions.").

In cases of a willful violation, such as this one, the injured individual shall recover actual damages, including costs and attorney's fees. *See* 11 U.S.C. § 362(k)(1); *Ramirez v. Fuselier (In re Ramirez)*, 183 B.R. 583, 589 (9th Cir. BAP 1995). The Ninth Circuit has indicated that the bankruptcy court has discretion to award a lump sum of up to $2,500.00 as a sanction for violation of the stay in the absence of an itemization of actual damages and medical evidence. *Herbert v. United States (In re Herbert)*, 203 F.3d 831 (9th Cir. 1999). And that is what the court intends to award the Debtor here.

Therefore, based on the foregoing, it is ordered that the automatic stay of 11 U.S.C. 362(a) is terminated to permit Movant to commence and/or continue the unlawful detainer proceedings to the extent permitted hereinabove and recover possession of the Property.

It is further ordered that Movant is ordered to show cause in writing by November 15, 2016, why it should not be sanctioned and ordered to pay Debtor damages in the amount of $2,500.00 under 11 U.S.C. § 362(k) based on Movant's admitted willful violation of 11 U.S.C. § 362(a)(1) and (a)(6).

It is further ordered that a hearing on the court's order to show cause will be held before this court on November 22, 2016, at 1:00 p.m. Movant and its attorney shall appear personally. No phone appearances are permitted.

The court shall enter an appropriate minute order.

47. 16-25895-B-13 EARL/JENNIFER MCFALL
DMR-1 Len ReidReynoso
Thru #49

OBJECTION TO CONFIRMATION OF PLAN BY SANDRA NELSON
10-12-16 [37]

CONTINUED TO 11/15/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED 341 MEETING SET FOR 11/3/2016 AND IN CONJUNCTION WITH MOTION TO AVOID LIEN OF SANDRA NELSON SET FOR 11/15/16.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court shall enter an appropriate minute order.

48. 16-25895-B-13 EARL/JENNIFER MCFALL
JPJ-1 Len ReidReynoso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-10-16 [31]

CONTINUED TO 11/15/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED 341 MEETING SET FOR 11/3/2016 AND IN CONJUNCTION WITH MOTION TO AVOID LIEN OF SANDRA NELSON SET FOR 11/15/16.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court shall enter an appropriate minute order.

49. 16-25895-B-13 EARL/JENNIFER MCFALL
PCB-1 Len ReidReynoso

OBJECTION TO CONFIRMATION OF PLAN BY DAN MOREHEAD
10-13-16 [41]

CONTINUED TO 11/15/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED 341 MEETING SET FOR 11/3/2016 AND IN CONJUNCTION WITH MOTION TO AVOID LIEN OF SANDRA NELSON SET FOR 11/15/16.

Final Ruling: No appearance at the November 1, 2016, hearing is required.

The court shall enter an appropriate minute order.

50. 16-26597-B-13 FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
10-12-16 [10]

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on June 29, 2016, after Debtors failed to make plan payments (case no.13-29800, dkt. 199). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

The Debtors assert that the previous plan was filed in order to retain their vehicles and satisfy tax debt. Debtors state that they fell behind on plan payments in the previous case because they were unaware that they had to make an additional plan payment after modifying their home loan. The Debtors further assert that their circumstances have changed from the previous case and that their plan will succeed because Joint Debtor Jose Aranda has obtained employment as an installer for Aerotek. The Debtors state that they earn enough wages to cover their expenses, including the purchase of a new car between the time the previous case was dismissed and when this case was filed, in addition to funding the proposed Chapter 13 plan.

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

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

The court shall enter an appropriate minute order.

51. 16-20799-B-13 JOHN SHAFER COUNTER MOTION TO DISMISS CASE
MET-3 Mary Ellen Terranella 10-17-16 [63]
Thru #52

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate minute order.

52. 16-20799-B-13 JOHN SHAFER MOTION TO CONFIRM PLAN
MET-3 Mary Ellen Terranella 9-13-16 [50]

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

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

Feasibility depends on the granting of a motion to value collateral of Internal Revenue Service which is listed in Class 2B. The Debtor has not filed, set for hearing, and served on the respondent creditor and Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3-15-1(j).

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

The court shall enter an appropriate minute order.

53. 16-23799-B-13 MELISSA REGALA COUNTER MOTION TO DISMISS CASE
WW-1 Mark A. Wolff 10-5-16 [53]
Thru #54

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate minute order.

54. 16-23799-B-13 MELISSA REGALA MOTION TO CONFIRM PLAN
WW-1 Mark A. Wolff 9-20-16 [42]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,600.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Third, due to the filing of the Internal Revenue Services priority claim in the amount of $47,043.38, the plan will take approximately 85 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the Debtor has not accurately listed all unsecured debts under the plan. Schedule F lists a debt of $14,000.00 owed to Jeanny Leung and Douglas Leung for the lease of real property located at 6879 Grant Avenue, Carmichael, California. However, the Leungs assert that the debt owed to them consists of a $100,901.99 promissory note for past due rent, insurance, and property taxes under a first lease, and a $49,040.68 settlement agreement for past due rent, damage to premises, and future rent under a second lease. Dkt. 63, Exhs. A, C. The Leungs further assert that the Debtor failed to obtain court authorization to incur the debt on the first lease, promissory note, and second lease in her prior Chapter 13 case (case no. 10-46317). The plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3).

Fifth, it does not appear that the Debtor will be able to make payments under the plan pursuant to 11 U.S.C. § 1325(a)(6). Although the Debtor states in her response and supporting declaration that she will increase monthly payments by $400.00 beginning January 2017 after finding a sixth customer for her care home, the Debtor has not provided sufficient evidence of the certainty of increase in income.

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

Although requested in its Objection, U.S. Bank, N.A. has not stated either a contractual or statutory basis for the award of attorney's fees in connection with its Objection. As such, U.S. Bank, N.A. is not awarded any attorney's fees.

The court shall enter an appropriate minute order.

55. 16-26953-B-13 LEON ALLEN
Pro Se

OBJECTION TO CERTIFICATION BY A DEBTOR
10-27-16 [14]

Tentative Ruling: The Lessor's Objection to Certification by Debtor has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain the objection.

Under Section 362(l)(3), the landlord may file an objection to one or both of the certifications that a debtor files pursuant to Sections 362(l)(1) and (2). The statute provides that the court shall conduct a hearing within 10 days of the filing and service of the objection by the landlord. The purpose of the hearing is to determine whether the certification to which the landlord has objected is true. If the objection is sustained, the exception to the automatic stay, Section 362(b)(22), is fully applicable and the landlord may recover possession of the residential property despite the filing of the petition. The clerk of the court must immediately serve upon the landlord and the debtor a certified copy of the court's order sustaining the landlord's objection.

Here, lessor John Tran ("Movant") commenced an unlawful detainer action on July 12, 2016, against Leon Allen ("Debtor"). On August 5, 2016, judgment was entered in state court in favor of Movant. The judgment awarded possession of the subject premises located at 3801 Florin Road, Suites A-7 and A-8, Sacramento, California, to Movant. It was not until September 28, 2016, that Debtor filed the Chapter 13 petition (case no. 16-26445). That case was subsequently dismissed on October 17, 2016, for failure to timely file documents. Thereafter on October 19, 2016, the Debtor filed this bankruptcy case. Debtor included with the filing of his petition a Form 101A but failed to certify that he deposited 30-days worth of per diem rent with the court. By virtue of Debtor's failure to certify that she has deposited 30-days worth of per diem rent, the provisions of 11 U.S.C. § 362(b)(22) are applicable in the present case and as provided for by 11 U.S.C. §§ 362(l)(1)(A) and (B).

The objection is sustained, the exception to the automatic stay, Section 362(b)(22), is fully applicable and lessor John Tran may recover possession of the real property commonly known as 3801 Florin Road, Suites A-7 and A-8, Sacramento, California.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

The court shall enter an appropriate minute order.