UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 2, 2015 at 10:00 a.m.

1.	13-29800-B-13 PGM-1	JOSE ARANDA AND FAVIOLA VALENCIA-ARANDA Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 10-28-15 [153]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

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

Debtors seek court approval to incur post-petition credit. Countrywide Home Loans, Inc. is the secured creditor with name change whose claim the plan filed November 26, 2013, provides for in Class 1. Green Tree Servicing, LLC, is the owner and holder of the account initiated by Countrywide Home Loans, Inc. Green Tree Servicing, Inc. has recently changed its name to Ditech Financial, LLC ("Creditor").

Creditor has agreed to a trial loan modification, which states that after all trial period payments are timely made and the Debtors have continued to meet all eligibility requirements of the modification program, the mortgage will be permanently modified. The Debtors are to make four (4) payments in the amount of $1,119.60 from November 1, 2015, through February 1, 2016. This payment will reduce Debtors' mortgage payment from the current $1,593.00 per month (Dkt. 102, Class 1 monthly contract installment amount). Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts. Once the loan is modified, the interest rate and monthly P&I will be fixed for the life of the mortgage unless the initial modified interest rate is below current market interest rates. The subject agreement will assist the Debtors in being able to make current loan payments and to keep the real property located at 7116 Koropp Court, Sacramento, California. The agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, or any discharge that the Debtors may receive in this case.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and

Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

2.	15-27404-B-13 MWB-1	CHARLES/DONNA SWIM Mark W. Briden	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA 10-20-15 [16]

Final Ruling: STIPULATION ENTERED 11/12/15. No appearance at the December 2, 2015 hearing is required.

3. 15-27705-B-13 JEREMY MCGHEE
AP-1 Mikalah R. Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-15 [18]

FIRST TECH FEDERAL CREDIT UNION VS.

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

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

First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Acura MDX, VIN ending in -12059 (the "Vehicle"). The moving party has provided the Declaration of Cassandra Kuring to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kuring Declaration provides testimony that Debtor has not made 1 post-petition payment, with a total of $488.31 in post-petition payment past due. Although the Movant asserts in its motion that the Debtor has stated his intent to surrender the Vehicle, the court finds no evidence of this in the Debtor's petition.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $18,450.48, as stated in the Kuring Declaration, while the value of the Vehicle is determined to be $12,884.00, as stated in Schedules B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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

asset.

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

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. 14-32007-B-13 JUSTIN ROMAN MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab 10-28-15 [20]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion to Modify 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 Debtor have 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 October 28, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

5.	15-28207-B-13 SJS-1	DAVID/DEANNA TIBBETT Scott J. Sagaria	MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 10-28-15 [11]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Debtors' Motion to Value Collateral of JPMorgan Chase Bank, N.A. 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 JPMorgan Chase Bank, N.A. at $0.00.

The motion to value filed by Debtors to value the secured claim of JPMorgan Chase Bank, N.A.("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 4724 Winter Oak Way, Antelope, California ("Property"). Debtors seek to value the Property at a fair market value of $260,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $269,701.00. Creditor's second deed of trust secures a claim with a balance of approximately $49,115.00. 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 civil minute order consistent with this ruling.

6.	15-28407-B-13 BMV-1	WILTON ALSANDOR Bert M. Vega	MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES 10-29-15 [9]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion for an Order to Value Collateral Held by Wells Fargo Dealer Services Under 11 U.S.C. § 506(a) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the Debtor failed to serve Wells Fargo Dealer Services ("Creditor") at the address listed on the Creditor's Proof of Claim No. 1 filed on November 12, 2015, the claim of which is the subject of the present motion. As such, the motion is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. 15-27708-B-13 BRETT JAKSICH
JPJ-1 Brian L. Coggins

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
11-10-15 [16]

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

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

First, the Debtor could not be examined at the first meeting of creditors because the Debtor did not have proper identification.

Second, the Debtor is delinquent to the Trustee in the amount of $1,800.00, which represents approximately the first plan payment that was due on October 25, 2015. By the time this matter is heard, an additional plan payment in the amount of 41,800.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release as required pursuant to Local Bankr. R. 3015-1(c)(3).

Fourth, Section 2.06 of the plan does not specify a selection 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, 2017.

Fifth, the plan payment in the amount of $1,800.00 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 and Class 2 secured claims. The aggregate of monthly amounts plus the Trustee's fee is $9,122.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Sixth, the plan specifies arrearage dividends of $0.00 to Ditech Financial, Ocwen Loan Servicing, and OneWest Bank in Class 1. It is not possible to pay the claim of these creditors through the plan with a monthly dividend specified at $0.00.

Seventh, the Debtor has an interest in real property located in Round Rock, Texas, which was not listed on Schedule A.

The plan filed September 30, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. 15-24609-B-13 AMANDA DENTON
EWV-72 Eric W. Vandermey

CONTINUED MOTION TO CONFIRM PLAN
9-22-15 [36]

DEBTOR DISMISSED: 11/06/2015

Final Ruling: No appearance at the December 2, 2015 hearing is required.

The case having previously been dismissed, the Motion is denied as moot.

9. 10-28510-B-13 MICHAEL/MONICA COLTHARP MOTION TO INCUR DEBT
CA-5 Michael David Croddy 11-18-15 [80]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtors' Motion to Incur New Debt 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 and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase a 2014 Chrysler Town & Country with 28,664 miles, the total purchase price of which is $23,696.00, with monthly payments of $418.93 for 75 months. The Declaration of Michael Coltharp and Monica Coltharp states that the debtors will be able to pay for this new debt by decreasing their expenses. Debtors state that they no longer pay $578.89 for a 2008 Chrysler and that they no longer have plan payments of $360.00 per month since the plan was completed in April 2015.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. 15-27710-B-13 SHANE/EDEN JACK
JPJ-1 Kristy A. Hernandez

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
11-10-15 [21]

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

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

The Debtor has not submitted proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed September 30, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. 15-26411-B-13 ROBERT/DEBRA SWEENY MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley, 10-13-15 [26]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated October 13, 2015, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 13, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. 15-27814-B-13 SHEILA FOSTER
Thru #14 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY D & B WESTERN PROPERTIES
10-26-15 [14]

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

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

D & B Western Properties ("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 $354.26 in pre-petition arrearages and a total secured claim of $31,249.96. 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 plan filed October 5, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. 15-27814-B-13 SHEILA FOSTER
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-10-15 [24]

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

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

First, the Debtor failed to appear at the first meeting of creditors set for November 5, 2015, and the continued meeting of creditors held on November 19, 2015, as required pursuant to 11 U.S.C. § 343.

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

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

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

Fifth, the plan payment in the amount of $1,670.00 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 2 secured claims. The aggregate of monthly amounts plus the Trustee's fee is $1,950.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed October 5, 2015, 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 civil minute order consistent with this ruling.

14. 15-27814-B-13 SHEILA FOSTER
MET-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY GEOFFREY H. SAFT, BRENDA S. VOELKER AND MEDALLION SILVER LLC
11-10-15 [19]

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

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

Geoffrey Saft, Brenda Voelker, and Medallion Silver, LLC (collectively "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 $6,112.61 in pre-petition arrearages and a total secured claim of $55,789.32. 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 plan filed October 5, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. 15-23515-B-13 JACQUELINE/ROBERT COONEY MOTION TO CONFIRM PLAN
HDR-4 Harry D. Roth 10-15-15 [66]

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

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

First, the plan will take approximately 70 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan payments in the amount of $2,565.00 for fifteen months and $2,680.00 for twenty-nine months do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,774.27. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan filed October 15, 2015, does not specify a cure of the post-petition arrearage owed to JP Morgan Chase including specific post-petition arrearage amount, interest rate, and monthly dividend.

Fourth, the Debtors have not provided the Trustee with a Class 1 Checklist and Authorization to Release Information pursuant to Local Bankr. R. 3015-1(c)(3). The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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 civil minute order consistent with this ruling.

16. 15-20918-B-13 VICKY LIND — OBJECTION TO CLAIM OF CREDIT FIRST, N.A., CLAIM NUMBER 10
JPJ-1 Candace Y. Brooks — 10-7-15 [27]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

The court's decision is to sustain the objection to Claim Number 10 of Credit First NA and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Credit First NA ("Creditor"), Proof of Claim Number 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,040.00. 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 June 3, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 13.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was June 3, 2015. The Creditor's Proof of Claim was filed June 17, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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 civil minute order consistent with this ruling.

17. 15-25118-B-13 CYNTHIA BROWN MOTION TO CONFIRM PLAN
DPB-2 Douglas P. Broomell 10-12-15 [77]

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

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

The plan will take approximately 119 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.[1]

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 civil minute order consistent with this ruling.

[1] This disposition renders the objection by Gregory T. Flahive (Dkt. 92) moot.

18. 15-24826-B-13 MET-3 | CLIFFORD/KATHLEEN GIANNUZZI
Mary Ellen Terranella | MOTION TO CONFIRM PLAN
10-15-15 [65]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 15, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

19. 15-28828-B-13 JOHN CLEMM
RWD-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-17-15 [11]

WERKING, INC. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Automatic Stay is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

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

Werking, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8969 Robbins Road, Sacramento, California (the "Property"). Movant has provided the Declaration of Bruce Werking to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title a trustee's foreclosure sale on July 23, 2015 (Dkt. 14, Exh. A). Movant seeks to proceed with the unlawful detainer action filed in state court on August 18, 2015.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on August 18, 2015, with a Notice to Quit served on August 3, 2015. Ex. 15, Dkt. B.

Movant has provided a properly authenticated/certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Ex. 15, Dkt. A. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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

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

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

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. 15-27132-B-13 LYNN/ARMIE SLATER
JPJ-1 Chinonye Ugorji

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-30-15 [22]

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 deny confirmation of the plan.

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors.

Second, the plan underestimates the secured claim owed to the Internal Revenue Service in the amount of $15,000.00. The creditor filed a proof of claim stating $67,739.38 as the amount of the secured claim. The plan will take approximately 77 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).

Third, the Debtors are delinquent to the Trustee in the amount of $2,694.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,694.00 will also be due. The Debtors have not made any plan payments since the filing of the petition on September 10, 2015. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtors did not submit proof of their social security numbers to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed September 24, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

21. 15-26933-B-13 PETE GARCIA
JPJ-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-29-15 [29]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

The court's decision is to overrule as moot the objection to Debtor's claim of exemption.

The Trustee objects to the Debtor's use of the exemption 11 U.S.C. § 522(b)(3)(B) as to two real properties: (1) 2870 26th Avenue, Sacramento, California and (2) 8295 Florintown Way, Sacramento, California. The Bankruptcy Code allows for exemptions under state or federal law. California has opted out of the federal exemptions and has elected state exemptions for its citizens pursuant to California Code of Civil Procedure § 703.130(a).

On November 18, 2015, the Debtor filed an amended Schedule C indicating that the Debtor has claimed an exemption as to his interest in the real properties under California Code of Civil Procedure § 703.140(b)(5). As such, the Trustee's objection is overruled as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

22. 11-23738-B-13 TERRENCE/LISA BREELER MOTION TO DISMISS CASE
TD-1 Peter G. Macaluso 10-26-15 [40]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion to Dismiss Chapter 13 Case by County of Placer, California, Secured Creditor 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-BuTrk (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 dismiss the case.

The Debtors have not remitted $6,813.67 in taxes for the 2014/2015 fiscal tax year for the real property commonly known as 3475 Pine Cone Lane, Meadow Vista, California ("Property"). The Debtors have not complied with Section 6.02 of the plan, which requires Debtors' financial affairs to be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

23. 15-27843-B-13 TARILYN ELLIOTT
JPJ-1 Michael David Croddy

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-10-15 [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). The Debtor has filed a written reply to the objection.

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

The Debtor has filed an amended petition on November 12, 2015, to disclose the prior bankruptcy in 2014 (case number 14-20874 and not 14-20620) filed within the last 8 years.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss denied, and the plan filed October 6, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. 15-28549-B-13 SHARON WILDEE MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 11-17-15 [15]

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

The court's decision is to deny without prejudice the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on October 7, 2015, after Debtor failed to make plan payments (Case No. 15-22932, Dkt. 58). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor does not explain why the previous case was filed and what has changed so that the present case will succeed. Instead, the Debtor explains her reasons for filing a new bankruptcy case – to cure pre-petition arrears owed on the her primary residence and to retain her vehicle. The Debtor additionally states that she has been employed by the same employer for more than 11 years and has an income that is presumably sufficient to fund the new plan. However, the Debtor does not explain how her financial situation is any different now than in the dismissed bankruptcy case such that she will be able to succeed with a new plan. In fact, Schedule J of the Debtor's current case shows a lower monthly net income than that of the dismissed case. The court is not convinced that the Debtor's circumstances have changed such that a new plan will succeed.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is 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 civil minute order consistent with this ruling.

25. 15-27051-B-13 SUSAN REICHARD
JPJ-1 Julius M. Engel

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-21-15 [23]

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.[1]

First, feasibility cannot be fully assessed because the Debtor has not amended Schedule J to include her vehicle insurance as requested by the Trustee at the meeting of creditors on October 15, 2015. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the terms for payment of the Debtor's attorney's fees are unclear. At Section 2.07, the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

The plan filed September 19, 2015, 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 civil minute order consistent with this ruling.

[1] This matter was continued from November 18, 2015. Debtor's counsel stated on the record that he would address and resolve the issues below raised by the Trustee. As of December 1, 2015, the docket does not reflect that any changes have been made and no new matters have been filed by the Debtor.

26. 10-32557-B-13 RENE/BLANCA AYALA
PPR-1 W. Scott de Bie

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF FROM CO-DEBTOR STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-3-15 [56]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From the Automatic Stay and Co-Debtor Stay is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

The court's decision is to deny as moot the motion for relief from stay.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4752 Canyon Hills Drive, Fairfield, California (the "Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that there are 3 post-petition defaults, with a total of $6,477.43 in post-petition payments past due.

Discussion

Debtors were granted a discharge in this case on November 3, 2015. Granting of a discharge to an individual in a Chapter 13 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. § 362(c)(2)(C). Additionally, Movant's secured claim was classified as a Class 4 secured claim paid directly by the Debtors. As a Class 4 claim, "[e]ntry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of the its loan or security documentation provided this case is then pending under chapter 13." Dkt. 11, ¶ 3.15. An order confirming the Debtors' Chapter 13 plan was entered on July 21, 2010 (Dkt. 34), and this case remains pending as under Chapter 13. There being no automatic stay, the motion is denied as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

27. 15-27658-B-13 MONICA BURTON
JPJ-1 Michael D. Lee
Thru #28

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-10-15 [35]

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 has not submitted proof of her social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, feasibility depends on the granting of a motion to value secured collateral for Green Tree Servicing, LLC. The Debtor has filed, served, and set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j). The hearing is scheduled for December 9, 2015, at 10:00 a.m.

The plan filed October 22, 2015, 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 civil minute order consistent with this ruling.

28. 15-27658-B-13 MONICA BURTON
MJ-1 Michael D. Lee

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
10-21-15 [22]

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

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

Subsequent to the filing of the objection by U.S. Bank, N.A. ("Creditor"), the Debtor filed an amended plan on October 22, 2015, which resolves the Creditor's objection that the plan filed September 30, 2105, does not provide for pre-petition arrearages of $5,264.59.

Nonetheless, the plan filed October 22, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #27 and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

29. 15-27866-B-13 KENNETH/CHRISTINA SHAW
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-10-15 [22]

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 have not submitted proof of their social security numbers to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the plan payment in the amount of $560.00 does not equal the aggregate of the Trustee's fees, the monthly administrative expenses, and monthly dividends payable on account of Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $570.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed October 13, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

30. 15-27966-B-13 MARY MACDONALD
ULC-1 Ronald W. Holland

MOTION TO CONFIRM PLAN
10-19-15 [9]

Thru #31

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Filed October 15, 2015, 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 first amended plan provided that the Chapter 13 Trustee confirms that the Debtor has made her first plan payment due November 25, 2015, and was thoroughly examined under oath at the meeting of creditors on November 19, 2015.

In addition, feasibility depends on the granting of a motion to value collateral for American Credit Acceptance for a 2008 Chrysler Sebring LX Convertible 2D. The motion to value collateral is granted at Item #31.

Provided that the above are satisfied, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

31. 15-27966-B-13 MARY MACDONALD
ULC-2 Ronald W. Holland

MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE
10-28-15 [14]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion to Value Secured Portion of Claim of American Credit Acceptance 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 American Credit Acceptance at $5,078.00.

The motion filed by Debtor to value the secured claim of American Credit Acceptance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Chrysler Sebring LX Convertible 2D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,078.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that

Proof of Claim No. 1 filed on October 29, 2015, by American Credit Acceptance is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 14, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,275.04 according to Proof of Claim No. 1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $5,078.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

32. 15-23669-B-13 DARLENE CHIAPUZIO-WONG MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 10-16-15 [67]
Thru #33

Tentative Ruling: The court issues no tentative ruling.

The Motion to Confirm Debtors' [sic] Second Amended Plan Filed on October 16, 2015, 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 motion will be determined at the scheduled hearing.

33. 15-23669-B-13 DARLENE CHIAPUZIO-WONG COUNTER MOTION TO DISMISS CASE
PGM-2 Peter G. Macaluso 11-17-15 [85]

Tentative Ruling: The court issues no tentative ruling.

The motion will be determined at the scheduled hearing.

34. 15-21677-B-13 EDWARD BROWN MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 10-19-15 [42]

Tentative Ruling: The Motion to Confirm First Amended Plan Dated October 19, 2015, 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 Trustee in the amount of $2,326.08, which represents approximately one half of one plan payment. By the time this matter is heard, an additional plan payment in the amount of $4,545.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan filed October 19, 2015, does not specify a cure of the post-petition arrearage owed to Flagstar Bank including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Third, the plan will take approximately 68 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

35. 15-25581-B-13 JOSE/VILMA SANTOS — MOTION TO CONFIRM PLAN
PLL-1 Peter Lago — 10-12-15 [51]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

The Motion to Confirm Debtors [sic] Third Amended Chapter 13 Plan Filed on October 12, 2015, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 12, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

36. 14-27787-B-13 RUBEN/LINDA RODRIGUEZ MOTION TO MODIFY PLAN
CA-3 Michael David Croddy 10-14-15 [55]

Tentative Ruling: The Debtors' Motion to Confirm Debtors' First Modified Chapter 13 Plan 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 properly account for all payments made by the Debtors to date by stating the following: "The Debtors have paid a total of $17,753.60 to the Trustee through October 2015. Commencing November 25, 2015, monthly plan payments shall be $3,575.00 for the remainder of the plan."

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

The court shall enter an appropriate civil minute order consistent with this ruling.

37. 10-52191-B-13 WILLIAM/FLORENCE GAVIA — MOTION TO APPROVE LOAN MODIFICATION
PGM-2 Peter G. Macaluso — 11-3-15 [31]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

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

Debtors seek court approval to incur post-petition credit. CitiMortgage, Inc. ("Creditor"), whose claim the plan filed November 3, 2015, provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,957.00 a month to $1,070.59 a month. The modification does not affect the distribution to unsecured creditors whom were originally to be paid no less than 0.00% in the original Chapter 13 plan..

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

38. 15-27491-B-13 SALLY YATES
Thru #40 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR RTED AMERICA, LLC
11-12-15 [26]

Tentative Ruling: The Objection to Confirmation of 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.

RTED America, LLC ("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 $19,065.77 in pre-petition arrearages and a total secured claim of $72,436.64. 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. § 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed September 30, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

39. 15-27491-B-13 SALLY YATES
JPJ-1 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-10-15 [22]

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.

Feasibility depends on the granting of a motion to value collateral for RTED America, LLC. The Debtor has filed a motion to value the collateral set for today's hearing. As stated at Item #40, the motion to value collateral for RTED America, LLC is denied without prejudice.

The plan filed September 30, 2015, 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 civil minute order consistent with this ruling.

40. 15-27491-B-13 SALLY YATES
RLC-1 Stephen M. Reynolds

MOTION TO VALUE COLLATERAL OF RTED AMERICA, LLC
10-12-15 [12]

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

The court's decision is to deny with prejudice the motion to value collateral of RTED America, LLC.

The motion to value filed by Debtor to value the secured claim of RTED America, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3401 Kentfield Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $194,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on November 13, 2015, by RTED America, LLC is the claim which may be the subject of the present motion.

Opposition

Opposition has been submitted by RTED America, LLC. Creditor asserts that the value of the Property is $215,000.00. This valuation is supported by an appraisal by Bryan Lynch, a certified real estate appraiser with Advantage Appraisals, Inc. (Dkt. 25, pp. 8-39). Creditor argues that since the value of the Property exceeds balance owed on

the first deed of trust by $13,000.00, that its claim is secured by at least $13,000.00 and that the Debtor's motion should be denied.

Discussion

The court finds sufficient evidence that the value of the property is $215,000.00. The first deed of trust secures a claim with a balance of approximately $202,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $72,436.64. Therefore, Creditor's claim secured by a junior deed of trust is not under-collateralized and *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002) does not apply. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied with prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

41. 15-20692-B-13 CAROLYN ANDREWS
JPJ-1 Richard L. Jare
Thru #42

OBJECTION TO CLAIM OF PREMIER BANK CARD, CLAIM NUMBER 16
10-7-15 [25]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

The court's decision is to sustain the objection to Claim Number 16 of Premier BankCard c/o Jefferson Capital Systems, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Premier BankCard c/o Jefferson Capital Systems, LLC ("Creditor"), Proof of Claim Number 16 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $248.56. 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 May 27, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 11.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was May 27, 2015. The Creditor's Proof of Claim was filed May 29, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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 civil minute order consistent with this ruling.

42. 15-20692-B-13 CAROLYN ANDREWS
JPJ-2 Richard L. Jare

OBJECTION TO CLAIM OF PREMIER BANK CARD, CLAIM NUMBER 17
10-7-15 [21]

Final Ruling: No appearance at the December 2, 2015, hearing is required.

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

The court's decision is to sustain the objection to Claim Number 17 of Premier BankCard c/o Jefferson Capital Systems, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Premier BankCard c/o Jefferson Capital Systems, LLC ("Creditor"), Proof of Claim Number 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $386.17. 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 May 27, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 11.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was May 27, 2015. The Creditor's Proof of Claim was filed May 29, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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 civil minute order consistent with this ruling.

43. 14-21394-B-13 PATRICK/SUZANNE CLARK MOTION TO QUASH
ASH-1 W. Scott de Bie 11-3-15 [193]

Tentative Ruling: The court issues no tentative ruling.

The Debtors', Patrick Clark's and Suzanne Clark's, Motion to Quash Petitioner's, S&J Advertising, Inc.'s Subpoenas for Rule 2004 Examination and Production of Documents 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 has been filed.

The motion will be determined at the scheduled hearing.

44.	15-22784-B-13 DBJ-3	JOSEPH/HEATHER ADKINS Bonnie Baker	CONTINUED MOTION TO RECONSIDER 10-14-15 [96]

Final Ruling: Continued to December 9, 2015 at 10:00 a.m. No appearance at the December 2, 2015 hearing is required.