UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 9, 2015 at 10:00 a.m.

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1. 14-29900-B-13 CARL BROWN — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 10-29-15 [25]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 29, 2015, 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 not permit the requested modification and not confirm the modified plan.

First, the claim of Sacramento County for a utility lien on property located at 4220 Zaccaro Way is misclassified as a Class 2A claim in the amount of $305.70 with a monthly dividend of $15.00 at 3% interest. However, the first deed of trust on that property is listed in Class 3 of the plan as a secured claim that is satisfied by the surrender of the collateral. The Trustee cannot pay the secured utility lien on property that has simultaneously been surrendered. The plan cannot be properly administered and feasibility cannot be assessed pursuant to 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $200.00 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 $208.00. The plan filed October 29, 2015, does not comply with Section 4.02 of the mandatory form plan.

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

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

2. 15-27404-B-13 CHARLES/DONNA SWIM — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Mark W. Briden — 11-16-15 [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 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). Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection deny the motion to dismiss provided the following are satisfied:

First, the Trustee confirms that it has received documentation regarding Debtors' personal injury claim and consents to confirmation of the plan subject to the requirement that the Debtors provide the Trustee with full disclosure of the actual net settlement amount once it becomes known. Additionally, the Trustee shall have 30 days from the receipt of the settlement amount to file an objection to the exemption if applicable. The order confirming shall provide for this change.

Second, counsel for the Debtors agrees to the reduction of administrative payment to $130.00 per month in order for plan payments to meet the aggregate amount of monthly payments plus the trustee's fee. The aggregate of monthly fees and the trustee's fee is $329.73. The order confirming shall provide for this change.

Provided that the aforementioned are satisfied, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed September 22, 2015, is confirmed.

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

3. 15-28707-B-13 IDA FOSTER
CCR-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-25-15 [14]

SEQUOIA EQUITIES VS.

And Item #5

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From 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.

Sequoia Equities ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 150 Rankin Way, Unit #84, Benicia, California (the "Property"). Movant has provided the Declaration of Ashley Babitt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Babitt Declaration states that there are 3 pre-petition payments in default, with a total of $4,595.00 in pre-petition payments past due. The Declaration states that Movant is the legal owner of the Property, which is part of the Sterling Heights Apartment Homes, and that the Debtor is a tenant. Movant seeks to proceed with the unlawful detainer action filed in state court on September 24, 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 September 24, 2015, with a Notice to Quit served on September 17, 2015. Exh. D, Dkt. 17.

Movant has provided a copy of Sterling Heights Apartment Homes 12-month residential lease to substantiate its claim of ownership. Exh. A, Dkt. 17. 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). There also is no evidence the Debtor is paying post-petition rent and the non-payment of post-petition rent is "cause" for relief from the automatic stay. 11 U.S.C. § 362(d)(1).

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; however, the Debtor shall have until January 8, 2016, at 5:00 p.m. to vacate the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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

4. 15-27614-B-13 STEPHEN/SANDRA DEGUIRE MOTION TO DISMISS CASE
WFH-1 Reno F.R. Fernandez 11-18-15 [33]

And Item #6

Tentative Ruling: The court issues no tentative ruling.

The court will treat the hearing on December 9, 2015 at 10:00 a.m. as a preliminary hearing. The court will hear any additional argument or comments that counsel wish to offer. The matter will then be continued to January 6, 2016, at 10:00 a.m. The court will either announce its decision on January 6, 2016, or will enter a written decision prior to that date.[1]

[1] The court is aware that the confirmation hearing in this matter is set for December 16, 2015, at 10:00 a.m. In order to comply with 11 U.S.C. § 1324(b), the court intends to hold and continue that confirmation hearing to January 6, 2016, at 10:00 a.m.

5. 15-27814-B-13 SHEILA FOSTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
CCR-1 Mary Ellen Terranella — 11-25-15 [27]

SEQUOIA EQUITIES VS.

And Item #3

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From 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.

Sequoia Equities ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 150 Rankin Way, Unit #84, Benicia, California (the "Property"). Movant has provided the Declaration of Ashley Babitt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Babitt Declaration states that there are 2 pre-petition defaults, with a total of $2,913.00 in pre-petition payments past due. Additionally, there is 1 post-petition payment in default, with a total of $1,682.00 in post-petition payment past due. Thus, the total payments past due is $4,595.00. The Declaration states that Movant is the legal owner of the Property, which is part of the Sterling Heights Apartment Homes, and that the Debtor is a tenant. Movant seeks to proceed with the unlawful detainer action filed in state court on September 24, 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 September 24, 2015, with a Notice to Quit served on September 17, 2015. Exh. D, Dkt. 30.

Movant has provided a copy of Sterling Heights Apartment Homes 12-month residential lease to substantiate its claim of ownership. Exh. A, Dkt. 30. 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). There is no evidence the Debtor is paying post-petition rent and the non-payment of post-petition rent is also "cause" for relief from the automatic stay. 11 U.S.C. § 362(d)(1).

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; however, the Debtor shall have until January 8, 2016, at 5:00 p.m. to vacate the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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

6. 15-27615-B-13 COREY DEGUIRE MOTION TO DISMISS CASE
WFH-1 Reno F.R. Fernandez 11-18-15 [32]

And Item #4

Tentative Ruling: The court issues no tentative ruling.

The court will treat the hearing on December 9, 2015 at 10:00 a.m. as a preliminary hearing. The court will hear any additional argument or comments that counsel wish to offer. The matter will then be continued to January 6, 2016, at 10:00 a.m. The court will either announce its decision on January 6, 2016, or will enter a written decision prior to that date.[1]

[1] The court is aware that the confirmation hearing in this matter is set for December 16, 2015, at 10:00 a.m. In order to comply with 11 U.S.C. § 1324(b), the court intends to hold and continue that confirmation hearing to January 6, 2016, at 10:00 a.m.

7. 15-25816-B-13 SNM-2 — JOSE CHAPA AND ESTHER SWENSEN-CHAPA — Stephen N. Murphy — MOTION TO CONFIRM PLAN 10-22-15 [42]

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 Debtors are delinquent to the Trustee in the amount of $1,346.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,362.00 will also be due. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(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 civil minute order consistent with this ruling.

8. 15-25118-B-13 CYNTHIA BROWN
RK-3 Douglas P. Broomell

OBJECTION TO CLAIM OF TERRY BROWN SR., CLAIM NUMBER 6
11-6-15 [84]

Tentative Ruling: The Objection to Claim and Request for Judicial Notice has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The court's decision is to sustain the objection to Claim Number 6 of Terry Brown, Sr. and disallow the claim in its entirety.

Creditor and party in interest Gregory T. Flahive ("Objector"), requests that the court disallow the claim of Terry Brown Sr. ("Creditor"), Claim Number 6. The claim is asserted to be unsecured in the amount of $80,000.00. Objector asserts that the claim should be disallowed in its entirety on three grounds: (1) the condition requiring the Debtor to pay back the Creditor after the first month that Debtor's law firm becomes profitable has not and cannot be satisfied because the Debtor's law firm was not profitable and is no longer in business, (2) the loan agreement between the Debtor and Creditor was an executory contract that the Debtor rejected and breached prepetition under 11 U.S.C. § 365(g)(1), and (3) Creditor's claim amount of $80,000.00 is unsupported since the loan agreement was for $75,000.00. The court agrees with Objector's third ground, which renders the first two moot.

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). 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). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The presumptive validity does not arise in this case. In *In re Heath*, 331 B.R. 424, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. Pro. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed. It also concluded that the sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b), which does not permit the court to disallow a claim because it has not been appropriately documented. However, *Heath* recognizes that when the basis for disallowance of a claim is raised and a creditor does not provide information or is unable to support its claim, the failure to document the claim may itself raise an evidentiary basis to disallow the claim.

Objector in this case correctly notes that Creditor's proof of claim fails to attach the writing upon which it is based, i.e., the loan agreement or note, as required by Fed. R. Bankr. Pro. 3001(c)(3)(A). The absence of supporting documentation deprives Creditor's proof of claim of any prima facie validity. See Fed. R. Bankr. Pro. 3001(f).

Objector has also raised a valid basis for disallowance of Creditor's claim, *i.e.*, that the claim is unenforceable against the Debtor because of the absence of a condition precedent. See 11 U.S.C. § 502(b)(1). That objection that the claim is unenforceable is supported by admissible evidence in the form of the Debtor's own deposition

testimony regarding the non-occurrence of an alleged condition precedent. Creditor has not responded to the objection and, thus, has not established any support for the claim asserted in its proof of claim. The objection to Claim Number 6 is, therefore, sustained and the claim disallowed in its entirety.[1]

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

[1] An objection to a claim must be served on the claimant, the debtor, and the trustee. See Fed. R. Bankr. Pro. 3007(a). According to Objector's Certificate of Service, the claimant and the trustee were served - the Debtor was not (Dkt. 87). Nevertheless, the court is informed by the Clerk that the Debtor's attorney has consented to electronic service under LBR 7005-1(a), (c). Absent some indication that Debtor's attorney failed to receive electronic notice of the filed objection, the court will deem such electronic notice sufficient service of docket nos. 84, 85, 86.

9. 14-31623-B-13 JAMES/NANCY LOCKWOOD MOTION TO MODIFY PLAN
SNM-4 Stephen N. Murphy 10-22-15 [60]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation & Confirm Second Amended 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 not permit the requested modification and not confirm the modified plan.

The plan proposes a total duration of 62 months, 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 modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

10. 15-28829-B-13 WAGMA SAFI
MLA-1 Mitchell L. Abdallah

MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO IMPOSE AUTOMATIC STAY
11-19-15 [9]

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

The court's decision is to deny the motion to extend the 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 September 20, 2015, because the plan would complete in 81 months, and thus exceeded the maximum amount of time allowed under § 1322(d), due to a Class 1 mortgage arrears claim being greater than expected (Case No. 13-36107, Dkts. 60, 63). 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 asserts that she was unable to timely complete plan payments due to an increase in mortgage loan arrearages that were realized after confirmation of the Chapter 13 plan. The Debtor had agreed to the dismissal of the prior case and asserts that re-filing a new case would afford her with the best option to propose and confirm a viable Chapter 13 plan. Debtor states that she will file a new plan that will bring current the mortgage loan. Although the Debtor has explained why her prior Chapter 13 case was dismissed and why she filed the current Chapter 13 case, there is no evidence (or explanation) of how, in this case, the Debtor will be able to make plan payments or of any circumstances that have changed significantly that in this case will lead to successful payments under a confirmed plan.

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

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

11. 12-32930-B-13 TERESA DAVIS MOTION TO SELL
SJS-1 Scott J. Sagaria 11-20-15 [19]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtor's Motion to Sell Property 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.

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

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to short sell the property described as 2448 Burgundy Way, Sacramento, California.

The proposed purchaser of the property Carole Hamilton has agreed to purchase the Property for $205,000.00. Wells Fargo Bank, NA holds a secured lien on the Property. According to Debtor, the principal amount currently owed on the lien to Wells Fargo is $89,427.68. No payroll statement or other evidence of loan balance is provided. The Debtor will net approximately $99,668.95 from the sale of the Property. A copy of the settlement statement is filed as Exhibit B, Dkt. 22.

Although the Debtor states that Wells Fargo Bank is owed $89,427.68, Wells Fargo Bank has filed a secured proof of claim (which has not been amended and to which there has been no objection) in the amount of $103,011.93. The Debtor states this is a "short sale." Inasmuch as there is a difference in the amount the Debtor claims she owes Wells Fargo Bank and the amount Wells Fargo Bank asserts in its proof of claim it is owed, and because the Debtor has moved for approval of a "short sale," it appears that the Debtor proposes to pay Wells Fargo Bank less than the full amount of its lien. If so, that presents a problem for several reasons.

First, if in fact the Debtor proposes to pay Wells Fargo Bank less than the full amount of its lien, relief under 11 U.S.C. § 363(f)(3) cannot be granted.

Second, there is no other evidence that would support relief under any other provision of 11 U.S.C. § 363(f).

Third, Wells Fargo Bank was not served in accordance with Fed. R. Bankr. Pro. 7004(h). Wells Fargo Bank is an insured depository institution registered with the Federal Deposit Insurance Corporation (fdic.gov). As an insured depository institution, Wells Fargo Bank must be served by certified mail addressed to an officer of the institution as required by FRBP 7004(h) unless an exception to that rule applies. See FRBP 7004(h)(1)-(3). According to the Debtor's certificate of service (dkt. 23), Wells Fargo Bank was not served by certified mail. The certificate of service reflects that Wells Fargo Bank was served by regular, first-class mail. It also appears from the docket that no exception applies: this creditor has not appeared in this case by an attorney, the court has not authorized service on this creditor other than by certified mail, and there is no written waiver by this creditor of the right to service by certified mail.[1] Therefore, service on Wells Fargo Bank is defective, particularly, since it appears that the Debtor intends to pay Wells Fargo Bank less than in full.

Based on the evidence before the court, the Motion is denied without prejudice.

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

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[1] The law firm of Pite Duncan, LLP filed a request for special notice on behalf of Wells Fargo Home Mortgage (Dkt. 15). Even assuming that request covers Wells Fargo Bank it expressly states that it is not a waiver of the requirement of service under Fed. R. Bankr. Pro. 7004.

12. 15-20441-B-13 TIMOTHY/CAROL PHELPS — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
JPJ-2 C. Anthony Hughes — 10-14-15 [51]
Thru #13

Final Ruling: No appearance at the December 9, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV I, LLC 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 1-2 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC("Creditor"), Claim Number. 1-2. The claim is asserted to be in the amount of $11,484.15. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objectors' exhibits, the last payment was received on or about September 19, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 22, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

13. 15-20441-B-13 TIMOTHY/CAROL PHELPS — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2
JPJ-3 C. Anthony Hughes — 10-14-15 [55]

Final Ruling: No appearance at the December 9, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV I, LLC 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 2-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC("Creditor"), Claim Number. 2-1. The claim is asserted to be in the amount of

$34,911.85. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objectors' exhibits, the last payment was received on or about August 20, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 22, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

14. 13-20048-B-13 SDB-4 — ALLEN HEROD AND MARCIE GRADWOHL, W. Scott de Bie — MOTION TO SELL O.S.T. 11-19-15 [63]

Tentative Ruling: The motion 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 grant the motion to sell.

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 122 Grapewood Street, Vallejo, California.

The proposed purchaser of the property Donna Gregory has agreed to purchase the Property for $288,000.00 in cash. All costs of the sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds. The net proceeds are expected to be in excess of $100,000.00 and, thus, sufficient to pay all allowed claims in full, an amount estimated to be $14,946.92. The sale is an arm's length transaction and the Debtors will not relinquish title or possession fo the property prior to payment in full of the purchase price. A copy of the purchase agreement and seller's counter offer are filed as Exhibit B, Dkt. 66.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

15. 13-30052-B-13 KEVIN BRACY
BLG-7 Pro Se

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR PAULDEEP BAINS, DEBTOR'S ATTORNEY(S)
11-10-15 [116]

Tentative Ruling: The Motion for Allowance of Professional 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).

The court's decision is to grant in part and deny in part the motion for compensation.

ADDITIONAL FEES AND COSTS REQUESTED

As part of confirmation of the Debtor's Chapter 13 plan, the Bankruptcy Law Group, PC ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The Disclosure of Compensation of Attorney For Debtor filed with the petition on July 31, 2013 (Dkt. 1, p. 38) indicates that the Applicant agreed to $4,000.00, with $500.00 paid prior to the filing of the petition and $3,500.00 to be paid by the Trustee. However, in the confirmation order entered on January 7, 2014, the court authorized payment of fees and costs "in the full amount of" $3,500.00, of which $500.00 was paid prior to the filing of the petition and the balance of $3,000.00 was to be paid by the trustee from plan payments. (Dkt. 58). The confirmation order controls.

Applicant asserts that the Trustee has already paid it $3,500.00, which is $500.00 more than was to be paid by the Trustee as authorized by the court in its confirmation order of January 7, 2014. Since Applicant states it has received $3,500.00 from the Trustee - and with the $500.00 Applicant received pre-petition - that means Applicant has been paid $4,000.00. Applicant has, therefore, been overpaid $500.00. Applicant now seeks additional compensation in the amount of $1,930.00 in fees and $37.06 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 119).

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 confirmation 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 the Debtor would decide to surrender his vehicle that was being paid through the plan. Applicant states that it was also unanticipated that the Debtor's income and expenses would change. Furthermore, according to the Applicant it was extremely unanticipated that the Debtor would be unable or unwilling to give the location of the surrendered vehicle and that this prompted a 2004 exam in San Rafael, California.

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	$1,930.00
Additional Costs and Expenses	$ 37.06
Less fees not authorized by Order Confirming	($ 500.00)
Total	**$1,467.06**

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

16. 15-27658-B-13 MONICA BURTON
MDL-1 Michael D. Lee

MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC
10-22-15 [29]

Final Ruling: No appearance at the December 9, 2015, hearing is required.

The Motion to Value Security 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 Green Tree Servicing LLC at $0.00.

The motion to value filed by Debtor to value the secured claim of Green Tree Servicing LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 11 Mencia Court, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $259,477.00 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.

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 $465,052.00. Creditor's second deed of trust secures a claim with a balance of approximately $44,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

17. 11-28859-B-13 ROBERT/SANDRA POWELL MOTION TO INCUR DEBT
PR-4 Patrick Riazi 11-6-15 [45]

Tentative Ruling: The Debtors' Motion to Incur New Debt 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).

The court's decision is to deny without prejudice the motion to incur post-petition debt.

The motion seeks permission to purchase from a private seller a 2006 Mercedes Benz E350 4D ("Vehicle") with 103,000 miles, the total purchase price of which is $8,900.00 with monthly payments of $148.34 for 60 months at an annual interest rate of 15.99%.

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 not reasonable. First, the Debtors do not explain any financial changes that will be made or their ability to afford monthly payments of $148.34. Second, while the Debtors state in their Declaration that the Vehicle will replace their 2003 Toyota Matrix that has over 200,000 miles, Schedules B and D of Debtors' petition show that they already have three other vehicles. These three vehicles were provided for in the Debtors' amended plan filed September 28, 2011, as either Class 2 or Class 4 claims. The Debtors do not address the reasonableness of incurring debt to purchase a well used, luxury vehicle - their fourth vehicle - at a substantial interest rate of 15.99% while seeking the extraordinary relief under Chapter 13 to discharge debts.

The motion is denied without prejudice.

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

18. 11-36867-B-13 DAVID/KATHLEEN LOYD
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF NATIONAL NOTE GROUP DE LLC1
11-10-15 [54]

Final Ruling: No appearance at the December 8, 2015, 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 National Note Group DE LLC1 at $0.00.

The motion to value filed by Debtors to value the secured claim of National Note Group DE LLC1 ("Creditor") is accompanied by Debtor David Loyd's declaration. Debtors are the owners of the subject real property commonly known as 457 Turner Drive, Benicia, California ("Property"). Debtor seeks to value the Property at a fair market value of $315,000.00 as of the petition filing date. As the owner, 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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4 filed on August 1, 2011, by National Note Group DE LLC1 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 $437,925.00. Creditor's second deed of trust secures a claim with a balance of approximately $103,214.52. 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.

19. 10-36371-B-13 WILLIAM MCINERNEY
MAR-2 Mariam S. Marshall

MOTION TO AVOID LIEN OF JP MORGAN CHASE BANK, N.A.
11-4-15 [78]

Final Ruling: No appearance at the December 9, 2015, hearing is required.

This motion is styled as a motion to avoid a lien. However, there is no lien to avoid. The lien referenced in the motion is a second deed of trust recorded against the Debtor's residence located at 39 Sandy Beach, Vallejo, California 94590 ("Property").

This matter was first heard on August 3, 2010, before Judge Holman with a motion to value the collateral of JP Morgan Chase ("Creditor"). Judge Holman entered an order valuing Creditor's collateral at $0.00, but denied the motion to avoid. Dkts. 10, 30, 36.

The court's decision is to deny entry of a judgment avoiding Creditor's lien and dismiss this motion without prejudice.

Even if a valuation motion is granted at the beginning of the case, a Chapter 13 debtor must still perform under the terms of a confirmed plan. If a Chapter 13 debtor fulfills all obligations under the chapter 13 plan and obtains a discharge, the debtor may then obtain an unconditional judgment avoiding a previously-valued lien and secured claim. Pursuant to Fed. R. Bankr. P. 7001(2), however, an adversary proceeding is necessary to obtain a judgment avoiding the lien and declaring it unconditionally invalid. Such relief cannot be obtained by way of a motion.

Here, the Debtor successfully filed, served, and prosecuted a valuation motion at the inception of this case. An order determining that the replacement value of the Creditor's collateral and valuing the Creditor's secured claim at $0.00 was entered. The Debtor subsequently fulfilled her obligations under the terms of her confirmed Chapter 13 plan and was granted a discharge under § 1328(a) on October 19, 2015. However, in order to actually have the subject lien of the Creditor removed from her property, in this court's view, the Debtor must now commence an adversary proceeding under Fed. R. Bankr. P. 7001(2) which governs proceedings "to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)." Therefore, the Debtor's motion for entry of a judgment will be denied and the motion dismissed without prejudice to the filing of an adversary proceeding under Fed. R. Bankr. P. 7001(2).

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

20. 15-20176-B-13 LEO PALILEO MOTION TO INCUR DEBT
SCG-1 Sally C. Gonzales 11-24-15 [34]

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

The motion seeks permission to obtain a medically necessary dental procedure, the total cost of which is $5,943.00, with a financed amount of $297.15 (and not $297.20) for 20 months. The Debtor asserts that it will be able to pay for the new debt because one creditor, Syncb, which was thought to be secured and paid through the plan at a rate of $331.54 per month, is in fact unsecured and will receive the same dividend as all unsecured creditors through the plan at 6%. Exh. B, Dkt. 37. In addition to that change, the Debtor is modifying his medical expenses, utility expenses, and transportation expenses, which will allow him to fund the dental procedure. Exh. F, Dkt. 37.

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.

21. 10-52191-B-13 WILLIAM/FLORENCE GAVIA MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 11-3-15 [36]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on November 3, 2015, 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 modifying plan state the following: "Commencing October 25, 2015, the Debtors shall pay $500.00 for the remaining 3 months 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.

22. 15-20693-B-13 RK-1 — RANDY/DANIELLE SMITH — Richard Kwun — MOTION TO VALUE COLLATERAL OF ARBORELLE APARTMENT HOMES — 11-6-15 [29]

Final Ruling: No appearance at the December 9, 2015, hearing is required.

The Motion to Value Secured Claim of Arborelle Apartment Homes 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 dismiss the motion without prejudice.

The court is unable to discern the relief the Debtors actually request in DCN RK-1. The motion is captioned as a *Motion to Value Secured Claim of Arborelle Apartment Homes*. However, the first paragraph of the motion states that the Debtors *"moves [sic] the court for an order avoiding the judicial lien recorded against the Debtors by creditor, Arborelle Apartment Homes[.]"* These are two different things and the court will not guess which one the Debtors request. Rather, it is the Debtors and their counsel who must state with particularity the relief requested and the grounds for it. See Fed. R. Bankr. Pro. 9013.

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

23. 14-21394-B-13 PATRICK/SUZANNE CLARK MOTION FOR STAY PENDING APPEAL
ASH-2 W. Scott de Bie 11-11-15 [200]

Tentative Ruling: Debtors', Patrick Clark's and Suzanne Clark's, Motion to Stay Orders Dated September 11, 2015 and October 20, 2015 Pending Appeal 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 without prejudice the motion by Debtors Suzanne and Patrick Clark to stay the orders entered on September 11, 2015, and October 20, 2015, pending the Debtors' appeal from those orders.

Although the court views the aforementioned orders as interlocutory orders, on November 17, 2015, the court entered an order in which it stated that it will take no further action on the aforementioned orders pending a determination by the district court whether it will grant the Debtors' leave to appeal or whether leave to appeal is necessary. Dkt. 209. In other words, the court has already stayed the aforementioned orders by its decision to not conduct any further proceedings on the valuation and transfer of Co-Debtor Suzanne Clark's 50% interest in S & J Advertising, Inc. under Cal. Corp. Code § 2000 until the question of the district court's appellate jurisdiction is resolved.[1]

Should the district court decide to grant the Debtors' leave to appeal or determine that leave to appeal is unnecessary, the Debtors may re-file their motion for a further stay pending appeal in this court.

Therefore, there being nothing for the court presently to stay as a stay is effectively already in place, the Debtors' motion will be denied without prejudice.

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

[1] Although the debtors filed no motion for leave to appeal, the court noted that the Federal Rules of Bankruptcy Procedure permit the district court, in its discretion, to treat the debtors' notice of appeal as a motion for leave to appeal. This court declined to infringe on or interfere with that discretion.

24. 15-26598-B-13 JOSHUA/KIMBERLY PAULSON — MOTION TO CONFIRM PLAN
WW-1 Mark A. Wolff — 10-27-15 [33]
Thru #25

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan and 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 plan payment in the amount of $335.00 for months 3 through 60 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 $455.00. The plan filed October 27, 2015, does not comply with Section 4.02 of the mandatory form plan.

Second, since the plan payment of $355.00 does not equal the aggregate amount of $455.00 for months 3 through 60, the plan will take approximately 129 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, feasibility cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6) because the Debtors have not indicated if they made post-petition mortgage payments directly to Specialized Loan Servicing for the months of September and October 2015 ($185.00 for each month or $370.00 total). If the Debtors have not been maintaining the post-petition payments on this debt, then the amended plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

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.

25. 15-26598-B-13 JOSHUA/KIMBERLY PAULSON — COUNTER MOTION TO DISMISS CASE
WW-1 Mark A. Wolff — 11-23-15 [43]

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 civil minute order consistent with this ruling.

26. 15-22784-B-13 JOSEPH/HEATHER ADKINS — CONTINUED MOTION TO RECONSIDER
DBJ-3 Bonnie Baker — 10-14-15 [96]

CONTINUED TO 12/16/15 AT 10:00 A.M. COURT WILL FILE A WRITTEN DECISION PRIOR TO THE CONTINUED HEARING DATE.