

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 20, 2016 at 10:00 a.m.

1. [15-27104](#)-B-13 VALERIE SMITH MOTION TO RECONSIDER DISMISSAL
JME-1 Julius M. Engel OF CASE
12-3-15 [[35](#)]
DEBTOR DISMISSED: 12/02/2015

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

The court's decision is to deny the motion with prejudice.

First, the Debtor has not exhibited any excusable neglect related to the dismissal of this case. Although the Debtor's attorney states that he believed his response to the Trustee's objection to confirmation of plan also challenged the Trustee's motion to dismiss, the motion to dismiss was filed as a separate matter and heard on a separate hearing date. Moreover, the Debtor's attorney failed to appear at the dismissal hearing and the case was subsequently dismissed.

Second, the Debtor has not filed a Certificate of Credit Counseling with the court as required by 11 U.S.C. § 521(b)(1). The failure to file this certificate was also one of the objections raised by the Trustee in its motion to dismiss and one of the reasons this court granted the Trustee's motion to dismiss.

For the reasons stated above, the motion to reconsider dismissal of case is denied with prejudice.

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

2. [15-22005](#)-B-13 RICHARD/TERESA BRACCO OBJECTION TO CLAIM OF LVNV
JPJ-2 Mark A. Wolff FUNDING, LLC, CLAIM NUMBER 4-1
Thru #3 11-16-15 [[46](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of LVNV Funding, 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 No. 4 of LVNV Funding, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 4. The claim is asserted to be in the amount of \$4,444.36. 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 Objector's exhibits, the last payment was received on or about May 19, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 13, 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 objection to the proof of claim is sustained.

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

3. [15-22005](#)-B-13 RICHARD/TERESA BRACCO OBJECTION TO CLAIM OF LVNV
JPJ-3 Mark A. Wolff FUNDING, LLC, CLAIM NUMBER 6-1
11-16-15 [[50](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of LVNV Funding, 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 No. 6 of LVNV Funding, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 6. The claim is asserted to be in

the amount of \$1,181.92. 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 Objector's exhibits, the last payment was received on or about February 15, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 13, 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 objection to the proof of claim is sustained.

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

4. [15-28906](#)-B-13 SHELLY CLARK
Scott J. Sagaria

HEARING RE: CONFIRMATION OF
PLAN
11-16-15 [[5](#)]

Tentative Ruling: The court issues no tentative ruling. The matter will be determined at the scheduled hearing.

5. [12-39713](#)-B-13 DONALD FLAVEL
MAC-4 Marc A. Carpenter

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE
12-4-15 [[68](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Objection to Notice of Mortgage Payment Change 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 sustain the objection.

Debtor objects to the Notice of Mortgage Payment Change filed by Capital One, N.A. ("Creditor"). Creditor seeks a mortgage payment increase from \$1,430.52 to \$4,295.81 beginning December 1, 2015, less than 30 days from the date the notice had been filed with the court. Debtor asserts that he has not seen any documentation to support the Creditor's demand amount, the origins of the escrow shortage, or specific past payments an due dates that have not been made. The Debtor further objects to the claim for an increase in escrow charges without sufficient time for the Debtor to pursue a mortgage loan modification to keep his home.

This Objection is a contested matter to the claim being asserted by Creditor. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The court has reviewed the Notice of Mortgage Payment Change filed November 9, 2015, and Proof of Claim No. 15-1 filed by Creditor. The court finds no evidence or explanation as to how the Creditor computed its increased mortgage payment.

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

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

6. [15-27614](#)-B-13 STEPHEN/SANDRA DEGUIRE CONTINUED MOTION TO CONFIRM
MF-1 Reno F.R. Fernandez PLAN
Thru #9 11-6-15 [[24](#)]

Final Ruling: Order entered January 19, 2016. No appearance at the January 20, 2016, hearing is required.

7. [15-27614](#)-B-13 STEPHEN/SANDRA DEGUIRE CONTINUED MOTION TO DISMISS
WFH-1 Reno F.R. Fernandez CASE
11-18-15 [[33](#)]

Final Ruling: Order entered January 19, 2016. No appearance at the January 20, 2016, hearing is required.

8. [15-27615](#)-B-13 COREY DEGUIRE CONTINUED MOTION TO CONFIRM
MF-1 Reno F.R. Fernandez PLAN
11-6-15 [[25](#)]

Final Ruling: Order entered January 19, 2016. No appearance at the January 20, 2016, hearing is required.

9. [15-27615](#)-B-13 COREY DEGUIRE CONTINUED MOTION TO DISMISS
WFH-1 Reno F.R. Fernandez CASE
11-18-15 [[32](#)]

Final Ruling: Order entered January 19, 2016. No appearance at the January 20, 2016, hearing is required.

10. [14-25916](#)-B-13 JAY/ANGELA SAGARAL
SJS-5 Scott M. Johnson

MOTION TO MODIFY PLAN
12-14-15 [[88](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 14, 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.

11. [15-25118](#)-B-13 CYNTHIA BROWN CONTINUED MOTION TO CONFIRM
DPB-2 Douglas P. Broomell PLAN
Thru #12 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 confirm the second amended plan.

This matter was continued from December 2, 2015, in order to be heard in conjunction with the Objection to Claim No. 7 of Navient Solutions, Inc. at Item #12. As stated by the Chapter 13 Trustee on the record in open court at the December 2, 2015, hearing, the plan filed October 12, 2015, can be confirmed if the claim of Navient Solutions, Inc. is disallowed in its entirety. Given that Claim No. 7 is disallowed in its entirety at Item #12, the plan is deemed to 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.

12. [15-25118](#)-B-13 CYNTHIA BROWN OBJECTION TO CLAIM OF NAVIENT
JPJ-1 Douglas P. Broomell SOLUTIONS INC, CLAIM NUMBER 7
12-2-15 [[98](#)]

Final Ruling: No appearance at the January 20, 2016, 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 No. 7 of Navient Solutions, Inc. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$91,582.83. 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 October 21, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 10. The Creditor's proof of claim was filed on October 23, 2015.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of

claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

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

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

Id. at 1432.

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

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

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

13. [15-22123](#)-B-13 ANTHONY/DEBORAH MORALES MOTION TO AVOID LIEN OF
GG-2 Gerald B. Glazer SPRINGLEAF FINANCIAL SERVICES,
INC.
11-21-15 [[56](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Debtors' Motion to Avoid Lien of Springleaf Financial Services, Inc. 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 deny without prejudice the motion to avoid security interest.

This is a request for an order avoiding the security interest of Springleaf Financial Services, Inc. ("Creditor") against the Debtors' personal property and household goods. However, the Debtors do not state with particularity which personal property or household goods serve as security for the \$5,100.00 loan borrowed from Creditor. Without any specification other than Debtors' broad statement that the personal property and household goods were "held primarily for the family and household use of the Debtors and their dependents," the court is left to assume that all personal property listed on Schedule B serves as security interest on the loan. Dkt. 59, Exh. A.

Pursuant of the Debtors' Schedule B, the personal property and household goods (collectively, "Personal Property") has an approximate value of \$43,838.00 as of the date of the petition.

Debtors have claimed exemptions pursuant to Cal. Civ. Proc. Code § 703 in the total amount of \$11,318.00 on Schedule C. Dkt. 59, Exh. A. Thus, the Personal Property is not fully exempt.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is equity to support Creditor's security interest. Therefore, the fixing of Creditor's security interest does not impair the Debtors' exemptions of Personal Property and its fixing is not avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

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, feasibility cannot be assessed because the plan terms are unclear for months four through six. The Additional Provisions of the plan do not specify the monthly dividend for the attorney fees of the Class 1 ongoing mortgage. Additionally it cannot be determined whether the Debtors are able to fund the proposed plan or put forth their best efforts to repay their creditors.

Second, the plan impermissibly modifies the secured claim of Selection Portfolio Servicing and there is no evidence that the lender has consented to or is considering a loan modification.

Third, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$9,300.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$4,650.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the plan does not specify a cure of the post-petition arrearage totaling \$2,500.00, including a specific post-petition arrearage amount, interest rate, and monthly dividend that is owed to Select Portfolio Servicing.

Fifth, the plan will take approximately 67 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.

15. [15-26428](#)-B-13 BRADLEY JOHNSON
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-9-15 [[38](#)]

Tentative Ruling: The Motion to Confirm Debtors' [sic] First Amended Plan filed on December 9, 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.

Although the Debtor asserts that he has provided the Chapter 13 Trustee with a Domestic Support Obligation Checklist, the Debtor's plan filed December 9, 2015, misclassified the claim of Laurie Johnson for a domestic support obligation as a Class 4 claim. Creditor Laurie Johnson filed a priority proof of claim for domestic support obligations totaling \$90,186.69. As a priority claim, this debt should be classified as a Class 5 claim pursuant to 11 U.S.C. § 507 instead of a class 4 claim.

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. [15-23431](#)-B-13 DAVID GARLAND
MMM-2 Mohammad M. Mokarram

MOTION TO AVOID LIEN OF MPM
FOOD EQUIPMENT GROUP, INC.
12-21-15 [[30](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of MPM Food Equipment Group, Inc. ("Creditor") against the Debtor's property commonly known as 2423 Barona Street, West Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$33,963.68 (Dkt. 33, Exh. B). An abstract of judgment was recorded with Yolo County on August 22, 2014, which encumbers the Property. All other liens recorded against the Property total \$319,849.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$361,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00 on Schedule C.

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

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

17. [15-28932](#)-B-13 DONALD/VIRGINIA THOMMEN
JPJ-1 John David Maxey

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-31-15 [[18](#)]

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 sustain the objection and conditionally deny the motion to dismiss.

First, the plan will take approximately 164 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 payment in the amount of \$50.00 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 \$90.81. The plan does not comply with Section 4.02 of the mandatory form plan.

The Trustee's objections with regard to Debtors' failure to disclose a sold golf cart and proof of social security numbers have been resolved.

For the first and second reasons stated above, the plan filed December 1, 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.

18. [15-26834](#)-B-13 CLYDE HUGHES
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
12-9-15 [[35](#)]

Tentative Ruling: The Motion to Confirm Debtors' [sic] First Amended Plan Filed on December 9, 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.

The plan will take approximately 102 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).

Although the Debtor asserts in his response that his friends and family are willing to contribute an increase to the Debtor's monthly payment by \$115.00, presumably ensuring that plan completes within the maximum length of 60 months, the Debtor provides no declaration from friends or family supporting this assertion. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

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.

19. [15-24335](#)-B-13 BENJAMIN BARNES AND CONTINUED MOTION TO MODIFY PLAN
PGM-2 JENNIFER VARELA-BARNES 11-18-15 [[53](#)]
Peter G. Macaluso

Tentative Ruling: This matter appears as a "Motion to Modify" on the docket when it should be a "Motion to Confirm" since this is a second amended plan proposed prior to confirmation. The Motion to Confirm Debtors' Second Amended Plan Filed on November 18, 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.

This matter was continued from January 6, 2016, to allow the Debtors to amend Schedule J and increase plan payments by \$200.00. Nothing new has been filed as of January 19, 2016. Therefore, the court adopts its tentative decision from the January 6, 2016, hearing.

The court's decision is to not confirm the second amended plan. Based on the Trustee's calculation in the opposition filed on December 15, 2015, the plan should provide for no less than 100% payment to unsecured creditors based on the Debtors' current monthly disposable income. The Debtors' reply filed December 28, 2015, states that they have made adjustments to lines 17 and 45 on Official Form 22C-2 without addressing the Trustee's other calculations. Consequently, it does not appear that the Debtors have corrected Official Form B 22C-2 so that their projected disposable income is being applied to make payments to unsecured creditors.

The court finds that the second amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and the plan will not be confirmed.

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

20. [15-21636](#)-B-13 WILLIAM WAY
JPJ-2 James L. Keenan

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 3-1
11-23-15 [[44](#)]

Final Ruling: No appearance at the January 20, 2016, 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 No. 3 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 3. The claim is asserted to be in the amount of \$1,138.17. 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 Objector's exhibits, the last payment was received on or about October 21, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 28, 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 objection to the proof of claim is sustained.

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

21. [15-28836](#)-B-13 CHARLES/PAMELA JACKSON
Pauldeep Bains

HEARING RE: CONFIRMATION OF
PLAN
11-13-15 [[5](#)]

Tentative Ruling: The court issues no tentative ruling. The matter will be determined at the scheduled hearing.

22. [15-28837](#)-B-13 RANDI SCOTT
Candace Y. Brooks

HEARING RE: CONFIRMATION OF
PLAN
11-13-15 [[7](#)]

Tentative Ruling: The court issues no tentative ruling. The matter will be determined at the scheduled hearing.

23. [11-49041](#)-B-13 JAMES FERREIRA
PGM-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
12-11-15 [[50](#)]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 11, 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 properly account for all payments made by the Debtor to date by stating the following: The Debtor has paid a total of \$30,240.00 to the Trustee through December 25, 2015. Commencing January 25, 2016, monthly plan payments shall be \$300.00 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.

24. [15-26244](#)-B-13 DOUGLAS GONZALES
PGM-2 Peter G. Macaluso

CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA,
N.A.
11-16-15 [[38](#)]

Tentative Ruling: The Motion to Value Collateral of Bank of America, N.A. has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the court cannot determine if service is proper or who the proper creditor is.

This matter was continued from January 6, 2016, in order to permit the Debtor and/or his attorney to identify the correct creditor whose collateral the Debtor wants to value. Insofar as the court can determine, nothing new has been filed as of January 19, 2016. Therefore, the court adopts its tentative decision from January 6, 2016.

The court's decision is to deny without prejudice the motion to value collateral of Bank of America, N.A.

This motion concerns real property located at 7625 Lake Hill Drive, Elk Grove, California. The motion states that the first and second deeds of trust are held by Bank of America. The Debtor's declaration in support of the motion states the second deed of trust - the deed of trust which is the subject of the motion - is held by BAC Home Loans Servicing. To further complicate matters, Claim Number 12 filed on November 27, 2015, states that a lien on this property to secure a debt of approximately \$358,877.43 is held by The Bank of New York Mellon fka the Bank of New York as Trustee for the Certificate Holders of CWMBS, Inc., CHL Mortgage Pass Through Trust 2004-16, Mortgage Pass Through Certificates, Series 2004-16. The amount stated in the proof of claim is roughly equal to the amount owing on the first deed of trust according to the motion.

The court has three concerns. First, there is a conflict between the motion and the declaration as to who is the actual creditor under the second deed of trust. Second, assuming (as appears to be the case) that Bank of New York Mellon and not Bank of America holds the first deed of trust, the Debtor needs to explain and clarify if the second deed of trust is also now held by Bank of New York Mellon or if it is still held by Bank of America, or some other creditor. Third, the certificate of service filed with the motion states that only Bank of America was served by certified mail as required by Rule 7004(h). Until the Debtor clarifies who the actual creditor on the second deed of trust is - a problem in and of itself - the court cannot determine if service is proper.

Therefore, motion will be denied without prejudice.

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

25. [14-26446](#)-B-13 TODD/DENISE BEINGESSNER MOTION TO MODIFY PLAN
SJS-6 Scott M. Johnson 12-14-15 [[81](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 14, 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.

26. [15-28650](#)-B-13 URBANO TOVAR MOTION TO VALUE COLLATERAL OF
MMM-1 Mohammad M. Mokarram CACH, LLC
12-21-15 [[15](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Motion to Value Collateral of Cach, LLC 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 Cach, LLC at \$10,042.00.

The motion to value filed by Debtor to value the secured claim of Cach, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6 Timber Court, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$185,000.00 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. 2 filed by Cach, LLC is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately \$174,958.00. Creditor's second deed of trust secures a claim with a balance of approximately \$48,049.19 (Claim No. 2). Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of \$10,042.00, and therefore payments in the secured amount of the claim 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.

27. [15-28854](#)-B-13 ROBERT/ROBYN JOHNSON
JPJ-1 Andrea Michaelsen

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-31-15 [[13](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 plan will take approximately 195 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 Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,381.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the terms for payment of the Debtors' attorney's fees are unclear. The plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of attorney's fees of \$2,500.00 and any other administrative expenses.

Fourth, the Debtors have not submitted proof of Debtor Robert Johnson's social security number to the Trustee.

The plan filed November 14, 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.

28. [15-22956](#)-B-13 MARSHALL MASSON AND LISA OBJECTION TO CLAIM OF RENOWN,
JPJ-2 ACKERMAN-MASSON CLAIM NUMBER 9
Guy David Chism 12-2-15 [[72](#)]

Final Ruling: No appearance at the January 20, 2016, 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 No. 9 of Renown and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Renown ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$1,728.82. 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 August 5, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 14. The Creditor's proof of claim was filed on September 21, 2015.

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

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

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

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

Id. at 1432.

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

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

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

29. [15-25157](#)-B-13 ANDRES/CARMEN PEREZ
BLG-1 Pauldeep Bains

MOTION TO CONFIRM PLAN
12-4-15 [[26](#)]

Final Ruling: No appearance at the January 20, 2016, hearing is required.

The Motion to Confirm First Amended Plan Filed on December 4, 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 December 4, 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.

Tentative Ruling: The Motion to Modify 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.

First, the plan does not provide for treatment of the secured claim of Nissan Motor Acceptance Corp. The Trustee has paid the secured claim in full with a total of \$1,972.75 in principal payments and a total of \$33.13 in interest payments pursuant to the previous plan confirmed on April 17, 2013.

Second, the plan does not provide for treatment of the secured claim of Wells Fargo Auto Finance. The Trustee has paid the secured claim a total of \$7,981.92 in principal payments and a total of \$522.55 in interest payments pursuant to the previous plan confirmed on April 17, 2013.

Third, the plan will take approximately 94 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, plan payments must be received by the Trustee on the 25th day of each month. The modified plan alters the due date for plan payments.

Fifth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$950.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, the plan impermissibly proposes to change the interest rate of the secured debt owed to the Internal Revenue Service in Class 2 from 10% to 3%. There is nothing in 11 U.S.C. § 1329 that permits the Debtor to make this change.

Seventh, the Debtor has not filed his federal income tax return for the tax period ending December 31, 2014, as required pursuant to 11 U.S.C. §§ 1329(b)(1) and 1325(a)(9). The Debtor has not complied with Local Bankr. R. 3015-1(b)(4).

Eighth, the Debtor has not paid his federal income taxes in the amount of \$23,994.61 for the tax year 2013. The Debtor has not complied with Local Bankr. R. 3015-1(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.

31. [15-28862](#)-B-13 LUCAS/VANESSA HUEZO
JPJ-1 Robert Hale McConnell

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-31-15 [[21](#)]

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 plan payment in the amount of \$1,327.89 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$1,348.11. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, feasibility depends on the granting of a motion to value collateral for Pacific Service Credit Union, which holds as its collateral a 2013 Volkswagen Passat. The motion to value collateral was set for hearing on January 6, 2016, and granted.

For the first reason stated above, the plan filed November 16, 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 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.

32. [15-29773](#)-B-13 CHARLES HUGHES AND VIRA MOTION TO EXTEND AUTOMATIC STAY
PGM-1 EISON 1-6-16 [[12](#)]
Peter G. Macaluso

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

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

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on November 13, 2015, after Debtors failed to become current on plan payments (Case No. 15-21659, Dkt. 103, 104). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

The Hughes Declaration states that the Debtors were unable to make payments in the prior bankruptcy case because the Debtors were separated, Debtor Charles Hughes had to do "much of the work [himself]," and Debtor Charles Hughes had difficulty working with his former attorney. Debtors assert that their situation has changed and that they will succeed in this new case because the Debtors have reconciled, they can afford plan payments with Debtor's social security and pension and Co-Debtor's income as an assistant, and they have retained a new attorney. Additionally, the Hughes Declaration states that Co-Debtor Vira Eison is looking for permanent employment, which the court interprets as Debtors' ability to not only fund the new plan but potentially pay more to unsecured creditors.

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

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

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

33. [15-24077](#)-B-13 ZAK VOGLER AND MICHELLE CONTINUED MOTION TO VALUE
BLF-1 MARTINEZ-VOGLER COLLATERAL OF BANK OF AMERICA,
Thru #34 Gordon G. Bones N.A.
8-26-15 [[24](#)]

Tentative Ruling: The Motion to Value Collateral of Bank of America N.A. was originally set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny the motion to value the secured claim of Bank of America, N.A. at \$0.00.

This matter was continued from November 18, 2015, and prior to that from October 7, 2015, due to a dispute in the valuation of real property commonly known as 9388 Trebbiano Circle, Elk Grove, California ("Property"). Although Bank of America, N.A. (holder of the second deed of trust) did not and has not objected to Debtors' motion to value, creditor Green Tree (holder of the third deed of trust) has objected and its objection affects the interests of Bank of America, N.A. Green Tree had filed an opposition stating that the value of the Property was greater than the \$379,164.00 valuation originally asserted by the Debtors and requested that the court continue the matter to allow time for Green Tree to obtain an appraisal.

Although no appraisal has been filed by Green Tree, the Debtors filed a certified appraisal valuing the property at \$420,000.00 (dkt. 65). Given that the appraisal is based on comparable sales and takes into account the extensive repairs the home needs, the court finds the appraisal more convincing than the Debtors' original opinion of value.

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 \$389,316.51 (Claim No. 10). Bank of America, N.A.'s second deed of trust secures a claim with a balance of approximately \$23,098.60. Therefore, Bank of America, N.A.'s claim secured by a junior deed of trust is not wholly unsecured. See 11 U.S.C. § 1322(b)(2).

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

34. [15-24077](#)-B-13 ZAK VOGLER AND MICHELLE CONTINUED AMENDED MOTION TO
BLF-2 MARTINEZ-VOGLER VALUE COLLATERAL OF GREEN TREE
Gordon G. Bones 8-26-15 [[33](#)]

Tentative Ruling: The Motion to Value Collateral of Green Tree - Amended was originally set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is deny the motion to value the secured claim of Green Tree at \$0.00.

This matter was continued from November 18, 2015, and prior to that from October 7, 2015, due to a dispute in the valuation of real property commonly known as 9388 Trebbiano Circle, Elk Grove, California ("Property"). Green Tree ("Creditor") had filed an opposition stating that the value of the Property was greater than the \$379,164.00 valuation originally asserted by the Debtors and requested that the court continue the matter to allow time for the Creditor to obtain an appraisal.

Although no appraisal has been filed by the Creditor, the Debtors filed a certified appraisal valuing the property at \$420,000.00 (dkt. 65). Given that the appraisal is based on comparable sales and takes into account the extensive repairs the home needs, the court finds the appraisal more convincing than the Debtors' original opinion of value.

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. 18 filed by Ditech Financial LLC fka Green Tree Servicing, LLC is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of \$389,316.51 (Claim No. 10). The second deed of trust secures a claim with a balance of approximately \$23,098.60. Creditor's third deed of trust secures a claim with a balance of \$41,719.69 (Claim No. 18). Therefore, Creditor's claim secured by a junior deed of trust is not wholly unsecured. See 11 U.S.C. § 1322(b)(2).

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

35. [15-20583](#)-B-13 ROBERT/DIANNA DANIEL
BLG-3 Pauldeep Bains

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR PAULDEEP BAINS,
DEBTORS' ATTORNEY(S)
12-28-15 [[51](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Pauldeep Bains' Motion for Compensation in the Amount of \$2635.00 and Reimbursement of Cost in the Amount of \$29.05 for an Aggregate of \$2,664.05 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 for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, the Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 26. Although the Applicant states in its motion that it received an initial retainer of \$500.00, the Applicant actually received \$1,190.00. Dkt. 1, p. 53. Applicant now seeks additional compensation in the amount of \$2,365.00 in fees and \$29.05 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 54).

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 Debtors would miss their first plan payment and that the Joint Debtor's income would increase. Although the court does not find that a missed plan payment would require Applicant to expend services greater than what it would otherwise provide in a typical Chapter 13 case, the court does find that preparing a motion to modify for changes in household income to be substantial and unanticipated post-confirmation work.

While the court finds the hourly rates and charges reasonable, there is a miscalculation of additional expenses. Serving 37 creditors by regular mail at \$0.49 per addressee calculates to \$18.13 and not \$17.95. Dkt. 54, p. 7. Thus, the total additional costs and expenses is \$18.13 in postage plus \$11.10 in copies, which equals \$29.23 in total additional expenses.

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	\$2,635.00
Additional Costs and Expenses	\$ 29.23

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

36. [15-28891](#)-B-13 MELODYE AUSTIN-JENKINS OBJECTION TO CONFIRMATION OF
JPJ-1 Scott D. Hughes PLAN BY JAN P. JOHNSON AND/OR
Thru #37 MOTION TO DISMISS CASE
12-31-15 [[19](#)]

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, feasibility depends on the Debtor completing a short-sale of her primary residence by November 2016. No evidence of the condition of the real estate market or of Debtor's ability to sell the property at that time has been presented. At the meeting of creditors on December 29, 2015, the Debtor testified that the property was not yet listed for sale. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan states in the Additional Provisions that if the property is not sold by November 2016, Nationstar shall have relief from the stay to foreclose. The plan provides for Nationstar in Class 1 with the Trustee paying the monthly contract installments of \$2,400.07. However, the plan does not specify if or when the Trustee shall cease making contract installments to Nationstar.

The plan filed November 30, 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.

37. [15-28891](#)-B-13 MELODYE AUSTIN-JENKINS OBJECTION TO CONFIRMATION OF
PPR-1 Scott D. Hughes PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
1-6-16 [[22](#)]

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #36.

The objecting creditor Deutsche Bank National Trust Company ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor asserts \$28,416.28 in pre-petition arrearages but has not yet filed a proof of claim. Although the Creditor

states that it will file a proof of claim prior to the claims bar deadline, the Creditor provides no evidence to support the basis for the claimed pre-petition arrears. The Creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the Creditor's objection is overruled.

Nonetheless, for reasons stated at Item #36, the plan filed November 30, 2015, 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.

38. [15-20693](#)-B-13 RANDY/DANIELLE SMITH
JPJ-1 Richard Kwun

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 2
11-23-15 [[34](#)]

Final Ruling: No appearance at the January 20, 2016, 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 No. 2 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 2. The claim is asserted to be in the amount of \$3,829.15. 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 Objector's exhibits, the last payment was received on or about September 14, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 30, 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 objection to the proof of claim is sustained.

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

39. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK APPLICATION FOR 2004
ASH-3 Arthur Samuel Humphrey EXAMINATION OF JUDY MENA
Thru #42 12-9-15 [[228](#)]

Tentative Ruling: The court issues no tentative ruling.

The Application for 2004 Examination of Judy Mena, President of S & J Advertising, Inc. has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The matter will be determined at the scheduled hearing.

40. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK MOTION TO AMEND
ASH-4 Arthur Samuel Humphrey 12-14-15 [[232](#)]

Tentative Ruling: The court issues no tentative ruling.

The Debtors', Patrick Clark's and Suzanne Clark's, Motion for Amendment of Order Entered December 8, 2015, 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 motion will be determined at the scheduled hearing.

41. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK MOTION TO CONVERT CASE FROM
PP-7 Arthur Samuel Humphrey CHAPTER 13 TO CHAPTER 7
12-23-15 [[244](#)]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Convert Case to Chapter 7 has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The motion will be determined at the scheduled hearing.

42. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK ORDER TO SHOW CAUSE RE: 2004
ASH-3 Arthur Samuel Humphrey EXAMINATION
12-15-15 [[237](#)]

Tentative Ruling: The court issues no tentative ruling. The matter will be determined at the scheduled hearing.