UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 27, 2015 at 9:32 a.m.

1.	13-31905-B-13 BLG-4	JOHN/JACLYN LABARBERA Chad M. Johnson	MOTION TO MODIFY PLAN 12-23-14 [84]

CASE DISMISSED DECEMBER 24, 2014.

2. 12-28006-B-13 PAUL/GAIL SMITH — MOTION TO APPROVE LOAN MODIFICATION
CA-4 Michael David Croddy — 1-13-15 [72]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Paul Daniel Smith and Gail Denise Smith ("Debtors") seek court approval for Debtors to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. Debtors will be able to pay for this new debt because the new monthly payment for principal, tax and insurance ($853.50) is lower than their old monthly payment ($2,004.78).

The Motion is supported by the Declaration of Paul Daniel Smith and Gail Denise Smith. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtors' ability to pay this claim on the modified terms.

Although the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the necessary information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

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

3. 14-22306-B-13 GREGORY/MICHELE DIMATTEO — OBJECTION TO CLAIM OF GREEN TREE SERVICING, LLC, CLAIM NUMBER 12
JPJ-1 — 12-9-14 [25]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Green Tree Servicing LLC ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $448,525.09. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

4. 14-28607-B-13 MANOUCHEHR RADPOUR MOTION TO CONFIRM PLAN
CAH-3 Oliver Greene 11-26-14 [37]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Confirm the Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 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 will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

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

5.	14-20608-B-13 JPJ-2	UNDRA/LADEANA SHELTON C. Anthony Hughes	OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 17 12-9-14 [38]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing, LLC ("Creditor"), Proof of Claim No. 17-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $353,124.00. Objector asserts that the Claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the Debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

6. 14-29215-B-13 JEFFERY/SANDRA THOMAS MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 12-16-14 [29]
Thru #7

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice.

The Chapter 13 Trustee opposes Debtor's motion on the grounds that the First Amended Plan filed on December 16, 2014 does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Statement of Current Monthly Income (Form 22c) (Dkt. 1) shows that the Debtors' monthly disposable income is $1,477.40 and that the Debtors must pay no less than $88,644.00 to general unsecured creditors.

The Debtors direct the court to *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010) to support their argument that they should not be required to pay the $1,477.40. Debtors state that they are a family of four with two teenaged sons, do not live extravagantly, and that their current expenses are modest.

The *Lanning* Court noted that, in most Chapter 13 cases, the financial information used in calculating the Means Test remains constant and the Means Test controls. *Id.* at 2474. The Court recognized, however, that in some cases a debtor's financial circumstances have changed significantly and financial information used in calculating the Means Test no longer strictly applies. *Id.* To determine the debtor's projected disposable income when the Means Test calculation of disposable income is a demonstrably unreliable predictor of the debtor's financial condition during the Chapter 13 plan period, a court should account for "known or virtually certain information about the debtor's future income or expenses." *Id.* at 2478. Thus, *Lanning* informs us that the Means Test is not to be inflexibly applied but that factual circumstances of each individual debtor are legally relevant.

Here, the Debtors have not shown that their financial circumstances have changed significantly or that the financial information used in calculating the Means Test no longer strictly applies. The Debtors assert that, just as the debtor in *Lanning* could not possibly pay the amount shown on her Means Test when taking into account a one-time severance payment, so too the Debtors in the instance case cannot pay their Means Test calculation of disposable income. However, the Debtors do not explain why they cannot pay this amount other than possibly relying on the fact that they are a family of four with two teenaged sons. The income of the Debtors as provided in the Statement of Current Monthly Income (Form 22c) (Dkt. 1) appears to be constant. Debtors provide the court with no information that there will be a change in their future income or expense.

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

7. 14-29215-B-13 JEFFERY/SANDRA THOMAS COUNTER MOTION TO DISMISS CASE
MET-2 Mary Ellen Terranella 1-7-15 [35]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is 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.

8.	14-30622-B-13 PGM-2	PATRICK SALIMI Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 12-17-14 [30]

TRANSFERRED TO DEPT. C. HEARING SCHEDULED FOR 1/27/15 AT 2:00 P.M.

9. 15-20122-B-13 JOHN DYSART MOTION TO EXTEND AUTOMATIC STAY
MMM-1 Mohammad M. Mokarram 1-12-15 [8]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Extend Automatic Stay is denied without prejudice.

John David Dysart ("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 (No. 2014-24827) was dismissed on November 10, 2014, after Debtor failed to cure a default, file a written objection and request a hearing, file a motion to modify his plan, perform the terms of the proposed modified plan pending its approval, or obtain approval of the modified plan, all within the time constraints allowed. *See* Order, Bankr. E.D. Cal. No. 2014-24827, Dkt. 18, November 10, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty 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 thirty days if the filing of the subsequent petition was filed 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). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed:

First, Debtor asserts that he was financially constrained by moving expenses and a rental security deposit upon being required to move to a new location during the filing of the prior case (Dkt. 8).

Second, Debtor asserts that he was financially constrained by medical expenses during the filing of the prior case (Dkt. 8). Debtor maintains that he has since recovered and is in good health.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Debtor has not provided evidence of the financial constraints experienced by the move or health-related issues. No supporting documents have been provided – such as invoices, bills, or receipts – which would show that the unexpected events caused the Debtor to be unable to pay the Chapter 13 Trustee in the prior case, and that the lack of those unexpected events now would result in Debtor being able to succeed in the present plan.

The motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

10.	14-30623-B-13 JPJ-2	KRISTIN BROWN Cara M. O'Neill	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-22-14 [27]

WITHDRAWN BY TRUSTEE ON JANUARY 6, 2015. MATTER REMOVED FROM CALENDAR.

11. 14-31623-B-13 JAMES/NANCY LOCKWOOD
SNM-1 Stephen N. Murphy
Thru #12

COUNTER MOTION TO DISMISS CASE
1-13-15 [24]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is 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.

12. 14-31623-B-13 JAMES/NANCY LOCKWOOD MOTION TO CONFIRM PLAN
SNM-1 Stephen N. Murphy 12-10-14 [11]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the First Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee filed an opposition to the Debtors' motion on the grounds that the Debtors failed to provide the trustee with a copy of their tax returns for the most recent tax year a return was filed. The Debtors have since provided the Trustee with a copy of their tax return for 2013, which is the most recent tax year a return was filed. The Trustee's objection has been resolved.

Therefore, the amended Plan filed December 10, 2014, will be confirmed. The Trustee's counter motion to dismiss this case is denied.

13. 14-29428-B-13 ROSANNE/STEPHEN AVILA — MOTION TO CONFIRM PLAN
HDR-4 Harry D. Roth — 11-7-14 [36]
Thru #14

WITHDRAWN. NEW HEARING SCHEDULED FOR MARCH 11, 2015 AT 10:00 A.M.

The Debtors filed a Motion to Confirm Second Amended Chapter 13 Plan on January 21, 2015, and provided a Notice of Hearing that the motion will be heard on March 11, 2015.

14. 14-29428-B-13 ROSANNE/STEPHEN AVILA COUNTER MOTION TO DISMISS CASE
HDR-4 Harry D. Roth 1-7-15 [56]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is 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.

15.	14-23031-B-13 JPJ-1	DALE HASICK C. Anthony Hughes	OBJECTION TO CLAIM OF COLUMBIA GAS OF OHIO, INC, CLAIM NUMBER 15 12-9-14 [26]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Columbia Gas of Ohio, Inc.("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be for utility services in the amount of $384.78. Objector asserts that the Claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

16.	14-22135-B-13 JPJ-3 **Thru #17**	ZAIAH MCNEAL W. Steven Shumway	OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 10 12-9-14 [32]

CASE DISMISSED DECEMBER 19, 2014. MATTER REMOVED FROM CALENDAR.

17.	14-22135-B-13 JPJ-4	ZAIAH MCNEAL W. Steven Shumway	OBJECTION TO CLAIM OF SANTANDER CONSUMER USA, CLAIM NUMBER 9 12-9-14 [28]

CASE DISMISSED DECEMBER 19, 2014. MATTER REMOVED FROM CALENDAR.

18. 14-29036-B-13 FOUAD MIZYED
AF-4 Arasto Farsad
Thru #19

MOTION TO CONFIRM PLAN
12-5-14 [60]

WITHDRAWN. NEW HEARING SCHEDULED FOR MARCH 11, 2015, AT 10:00 A.M.

The Debtors filed a Motion to Confirm Fourth Amended Chapter 13 Plan on January 20, 2015, and provided a Notice of Hearing that the motion will be heard on March 11, 2015.

19. 14-29036-B-13 FOUAD MIZYED
AF-4 Arasto Farsad

COUNTER MOTION TO DISMISS CASE
1-13-15 [79]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

20. 10-30137-B-13 TY/REBECCA MATT
MG-4 Michele Garfinkel

CONTINUED MOTION TO MODIFY PLAN
10-12-14 [86]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 grant the Motion.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The plan was amended because the Debtors have been able to refinance their home in order to pay off their plan early. Furthermore, the Debtors concur with the Trustee's response that the court order properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $106,177.33 to the Trustee through September 25, 2014 with no further payments due for a total plan length of 53 months.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed, the debtors having paid a total of $106,177.33 to the Trustee through September 25, 2014 with no further payments due for a total plan length of 53 months.

21.	14-28637-B-13 JPJ-2	RALPH/CHRISTINA CONCHAS Julius M. Engel	MOTION TO CONVERT CASE TO CHAPTER 7, MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE 12-9-14 [21]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion of Convert 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.

Trustee's Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, the Motion to Dismiss Case for Unreasonable Delay that is Prejudicial to Creditors is denied, and the Motion to Dismiss Case is denied without prejudice.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c).

First, the Debtors have failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on October 28, 2014. To date, the Debtors have failed to take further action to confirm a plan in the case.

Second, the total value of non-exempt property is $70,000.00. Conversion to a Chapter 7 proceeding rather than dismissal of case is in the best interest of creditors and estate pursuant to 11 U.S.C. § 1307(c).

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to a case under Chapter 7.

22. 10-20039-B-13 SOPHANY HEM
PGM-1 Peter G. Macaluso

MOTION TO VACATE DISMISSAL OF CASE
12-29-14 [35]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Vacate 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 Motion to Vacate is granted.

Due to the death of the Debtor's brother, the need to care for his children, and the stress that the situation produced, the Debtor was unaware that her payments were behind. Debtor is currently on the 59th month of her Plan and has maintained a respectable payment history until the recent death. Debtor has provided her counsel with a cashier's check for the balance due, which will be turned over to the Trustee upon at the hearing upon approval of Debtor's motion.

The Motion to Vacate Dismissal of Case will be granted.

23. 14-21240-B-13 DIANE OHARA
PGM-3 Peter G. Macaluso
Thru #24

CONTINUED MOTION TO CONFIRM PLAN
7-7-14 [44]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied without prejudice for undue delay and prejudice to creditors.

The feasibility of the plan depends on the Debtor obtaining a loan modification with Ocwen Loan Servicing. No evidence that the lender has consented to or is considering a loan modification has been presented to the court as of August 12, 2014 when the Trustee filed an opposition to the Motion to Confirm the Amended Plan.

The Motion to Confirm the Amended Plan is denied without prejudice for undue delay and prejudice to creditors.

24. 14-21240-B-13 DIANE OHARA
PGM-3 Peter G. Macaluso

CONTINUED COUNTER MOTION TO DISMISS CASE
8-4-14 [51]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

25. 11-42741-B-13 MARZENA CICHOSZ
CA-2 Michael David Croddy

MOTION TO VALUE COLLATERAL OF UNION BANK, N.A.
1-12-15 [47]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Value Collateral is granted.

The Motion to Value filed by Marzena Sylwia Cichosz ("Debtor") to value the secured claim of Union Bank, N.A. ("Creditor") is accompanied by Debtor's declaration (as an exhibit in Dkt. 49). Debtor is the owner of the subject real property commonly known as 6333 Wexford Cir, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $115,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 that creditor's secured claim (rights and interest in collateral), that 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.

The first deed of trust secures a claim with a balance of approximately $135,183.88. Union Bank, N.A.'s second deed of trust secures a claim with a balance of approximately $56,071.96. 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.

26.	11-26545-B-13 JPJ-2	MICHAEL BARNETT John A. Tosney	OBJECTION TO CLAIM OF WELLS FARGO HOME MORTGAGE, CLAIM NUMBER 5 12-9-14 [89]

TRANSFERRED TO DEPT. C. HEARING SCHEDULED FOR 1/27/15 AT 2:00 P.M.

27.	14-22445-B-13 JPJ-2	JORGE REYES AND ROSARIO SANCHEZ Thomas O. Gillis	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A. CLAIM NUMBER 6 11-10-14 [42]

TRANSFERRED TO DEPT. C. HEARING SCHEDULED FOR 1/27/15 AT 2:00 P.M.

28. 11-39246-B-13 ROWENA WALKER — MOTION TO MODIFY PLAN
CAH-4 C. Anthony Hughes — 11-24-14 [79]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

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

The Motion to Confirm the Modified Plan is granted.

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

29. 14-24049-B-13 KRISTIN AUSTIN MOTION TO INCUR DEBT
MWB-6 Mark W. Briden 12-18-14 [87]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Incur Debt 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 Motion to Incur Debt is granted.

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 motion seeks an order authorizing the Debtor to borrow a sum not exceeding $30,000.00 from her former husband, which proceeds would only be used to bring current the Promissory Note to Ocwen Loan Servicing, LLC. Ocwen secures a First Deed of Trust against debtor's personal residence located at 1556 Saint Andrews Drive, Redding, CA ("Residence") in the approximate amount of $370,000.00. The Ocwen loan is not in the debtor's name. The Debtor received the Residence as an inheritance from her mother who passed away in October 2013. Ocwen has agreed to allow the debtor to assume the mortgage if the mortgage is brought current. On December 16, 2014, the court authorized the Debtor to incur the debt (Dkt. 80). The $30,000 borrowed from debtor's former husband will bring the Promissory Note to Ocwen current and shall be secured by a Second Deed of Trust against the Residence.

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.

30. 14-29453-B-13 KAREN SCHWEITZER
JGD-1 John G. Downing
Thru #31

CONTINUED COUNTER MOTION TO DISMISS CASE
12-30-14 [69]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

Because the plan proposed by the Debtors 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.

31. 14-29453-B-13 KAREN SCHWEITZER
JGD-1 John G. Downing

CONTINUED MOTION TO CONFIRM PLAN
11-19-14 [38]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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).

The Motion to Confirm the Amended Plan is denied without prejudice.

The Debtor does not appear to be able to fund the payments proposed by the Plan. The Plan filed October 9, 2014 does not comply with 11 U.S.C. § 1325(a)(6). According to Schedules I and J of the Petition filed October 9, 2014, the Debtor's average monthly income is $1,500.00 and her average monthly expenses are $7,317.00. This leaves a monthly net income of -$5,817.00. The Debtor's Motion to Confirm the Amended Plan is denied without prejudice.

32. 13-35955-B-13 CHARLES/LISA GOERLICH MOTION TO MODIFY PLAN
RAC-3 Richard A. Chan 12-11-14 [36]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

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

The Motion to Confirm the Modified Plan is granted.

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

33.	14-23055-B-13 JPJ-2	GUSTAVO TAPIA Thomas O. Gillis	OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 2 12-9-14 [48]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing, LLC ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $55,993.59. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

34.	10-41657-B-13 JPJ-1	ROBERTO/CARMELITA RICO Timothy J. Walsh	OBJECTION TO CLAIM OF FINANCIAL CREDIT NETWORK, INC, CLAIM NUMBER 28 12-9-14 [56]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Financial Credit Network, Inc. ("Creditor"), Proof of Claim No. 28-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,004.94. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

35. 11-21858-B-13 KIMBERLY NICHOLAS-SAVALA MOTION TO VALUE COLLATERAL OF
SDB-2 W. Scott de Bie PNC BANK, N.A.
12-30-14 [39]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Value 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 Motion to Value Collateral is granted.

The Motion to Value filed by Kimberly Anne Nicholas-Savala ("Debtor") to value the secured claim of PCN Bank/National City Mortgage ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 700 Evans Road, Dixon, California ("Property"). Debtor seeks to value the Property at a fair market value of $190,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 that creditor's secured claim (rights and interest in collateral), that 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.

The first deed of trust secures a claim with a balance of approximately $367,415.93. PCN Bank/National City Mortgage's second deed of trust secures a claim with a balance of approximately $41,001.13. 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.

36.	11-42959-B-13 SS-2	SIDNEY/ANGELA MOORE Scott D. Shumaker	MOTION TO VALUE COLLATERAL OF PNC BANK, N.A. 12-23-14 [54]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Value 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 Motion to Value Collateral is granted.

The Motion to Value filed by Sidney Bernard Moore and Angela Ingrid Moore ("Debtors") to value the secured claim of PCN Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 10964 Britton Way, Mather, California ("Property"). Debtors seek to value the Property at a fair market value of $250,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 that creditor's secured claim (rights and interest in collateral), that 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.

The first deed of trust secures a claim with a balance of approximately $388,293.54. PCN Bank, N.A.'s second deed of trust secures a claim with a balance of approximately $70,500.00. 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.

37.	12-20963-B-13 JPJ-2	SHARON SOULES Mark A. Wolff	OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 15 11-10-14 [43]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing, LLC ("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $340,706.75. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

38.	13-32363-B-13 JPJ-1	EUNICE DIXON Mikalah R. Liviakis	OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 5 12-9-14 [32]

TRANSFERRED TO DEPT. C. HEARING SCHEDULED FOR 1/27/15 AT 2:00 P.M.

39. 14-30363-B-13 SARITA KUMAR MOTION TO CONFIRM PLAN
AAV-1 Alla V. Vorobets 12-29-14 [28]
Thru #40

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice due to insufficient notice. Debtor has provided only 29 days' notice. Forty-two days' notice is required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

40. 14-30363-B-13 SARITA KUMAR
AAV-1 Alla V. Vorobets

COUNTER MOTION TO DISMISS CASE
1-12-15 [34]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

41.	13-25566-B-13 JPJ-3	MARCO CHAVEZ AND FEBE VELASQUEZ Thomas O. Gillis	OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 12 12-9-14 [55]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing, LLC ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $263,87.40. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

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.

42. 14-31270-B-13 LEE RUSSELL
CPG-2 Anh V. Nguyen
Thru #43
R. CHAVEZ VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-17-14 [40]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The court issues no tentative ruling.

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 motion will be determined at the scheduled hearing.

43. 14-31270-B-13 LEE RUSSELL
CPG-3 Anh V. Nguyen

MOTION TO VACATE DISMISSAL
O.S.T.
1-14-15 [58]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The court issues no 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 motion will be determined at the scheduled hearing.

44. 12-42172-B-13 DAVID/ROSA MARTINEZ MOTION TO INCUR DEBT
CAH-2 C. Anthony Hughes 1-13-15 [51]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Incur Debt is granted.

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 Debtors seek an Order authorizing them to incur debt and enter into a Home Affordable Modification Agreement (Permanent Loan Modification) with Ocwen Loan Servicing, LLC. The Debtors previously entered into a Home Affordable Loan Modification Program (Trial Period Plan) with Ocwen. This Motion to Incur Debt was heard and conditionally granted on October 28, 2014 (Dkt 54, Exhibit A). The debtors have successfully completed the Trial Period Plan and are now seeking permission to enter into a Permanent Loan Modification.

The court finds that the request to incur debt, 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.

45. 14-22472-B-13 TIMOTHY KRUSE
CA-1 Michael David Croddy

CONTINUED MOTION TO CONFIRM PLAN
7-8-14 [84]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the First Amended Plan is denied without prejudice.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Creditor Laborers Trust Funds filed an objection to confirmation of Chapter 13 plan on August 19, 2014. Hearings were held on September 2, 2014 and December 16, 2014. The matter was continued to January 27, 2015 to allow the parties time to complete settlement negotiations. On January 21, 2015, the Debtor filed a response to Creditor's objection and acknowledged that Debtor's First Amended Chapter 13 plan is unconfirmable at this time. The Debtor and Creditor have met, had discussions, had a 2004 Exam, conducted depositions, and conducted discovery. However, the Debtor and Creditor have not come to a meeting of minds.

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

46. 14-28073-B-13 LUIS BOLANOS LOSADA COUNTER MOTION TO DISMISS CASE
Thru #47 David S. Henshaw 1-12-15 [45]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

47. 14-28073-B-13 LUIS BOLANOS LOSADA MOTION TO CONFIRM PLAN
DSH-2 David S. Henshaw 12-9-14 [41]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee and Creditor South Park Townhouse Association oppose the Debtor's motion.

First, the court finds that the Trustee is unable to fully assess feasibility of the plan as there is no specific arrearage dividend amount stated to be paid to the Class 1 Creditor South Park Townhouse Association. Although Section 6.03 of the Amended Plan states that this creditor will be paid a pro-rate arrearage dividend, without a specific amount the Trustee is unable to assess if the plan complies with Section 4.02 of the mandatory form plan.

Second, the court finds that the plan will take approximately 112 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.

48. 12-27474-B-13 BILLY/BONNEY PICKETT
MOH-2 Michael O'Dowd Hays

MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES, INC.
1-6-15 [35]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, 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 Motion to Value Collateral is granted.

The Motion filed by Billy Joe Pickett and Bonney Sue Pickett ("Debtors") to value the secured claim of Springleaf Financial Services, Inc. (formerly American General Finance) ("Creditor") is accompanied by Debtors' declaration. Debtors were former owners of a 1995 Toyota 4 Runner ("Vehicle").

Debtors assert that sometime in 2009, the vehicle was rolled, badly damaged, and the transmission went out. Debtors could not afford to pay for the necessary repairs and they notified AGF by phone at their local office in Chico of the accident and advised them that the vehicle was available for pickup. AGF allegedly never came to get the vehicle. The Vehicle was allegedly scrapped and the Debtors did not receive any money for it.

Because the Debtors are no longer in possession of the Vehicle, it does not appear on Schedule B, line 25. However, the debt is listed on Debtors' credit report (Dkt. 38, Exhibit A) as an Installment Loan with a balance of $5,829.00 and the following notation: "Profit and Loss writeoff. Secured by household goods. Close 08/09." Furthermore, the debt was listed on Debtors' Schedule F as unsecured in anticipation of determining that any debt against Debtor's household goods would be avoidable if a secured claim was in fact filed.

As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The Debtor seeks to value the Vehicle at a replacement value of $0.00 as of the petition filing date. In the alternative, if the Vehicle has not been scrapped and has some nominal liquidation value, Debtors will surrender their interest in the Vehicle to Springleaf Financial Services, Inc. and will sign any documents necessary to facilitate that transfer.

The lien on the Vehicle's title secures a purchase-money loan incurred sometime in 2009 (Dkt. 35), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,931.98 (Dkt. 38). Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00. *See* 11 U.S.C. § 506(a).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

49. 14-29375-B-13 JAMES FETTY MOTION TO CONFIRM PLAN
RJ-4 Richard L. Jare 12-9-14 [45]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Motion to Confirm the Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 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 will issue its ruling from the parties' pleadings.

The Motion to Confirm the amended Plan is granted.

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

50.	14-31379-B-13 MS-2	ANATOLIY LEVCHUK Mark Shmorgon	MOTION TO CONFIRM PLAN 12-6-14 [25]

CASE DISMISSED JANUARY 20, 2015. MATTER REMOVED FROM CALENDAR.

51.	14-27780-B-13 HDR-4 **Thru #53**	EDWARD MEDINA Harry D. Roth	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 12-4-14 [62]

Final Ruling: No appearance at the January 27, 2015 hearing is required on this item.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. ("Creditor") against property of Edward Joseph Medina ("Debtor") commonly known as 14241-45-49 4th Street, Yolo, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,561.60 (Dkt. 65, Exhibit B, which is a slightly different amount than that stated in the motion, Dkt. 62, which lists the judgment amount of $3,261.60). An abstract of judgment was recorded with Yolo County on May 6, 2014, which encumbers the Property identifies a judgment amount of $3,561.60.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the date of the petition. The unavoidable consensual liens total $250,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 on Schedule C.

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

52. 14-27780-B-13 EDWARD MEDINA
HDR-5 Harry D. Roth

MOTION TO CONFIRM PLAN
11-26-14 [56]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee filed an opposition to the debtor's motion.

The court finds that the trustee is unable to fully assess the feasibility of the plan. Pursuant to Local Bankr. R. 3015-1(c)(3), the Debtor is required to serve upon the Trustee no later than fourteen days after the filing of the petition Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Calms Being Paid by the Trustee. To date, the Debtor has not provided the Trustee with these documents sufficient to enable the Trustee to assess feasibility. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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

53. 14-27780-B-13 EDWARD MEDINA
HDR-5 Harry D. Roth

COUNTER MOTION TO DISMISS CASE
1-12-15 [69]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

54. 14-27181-B-13 DONALD TAGGART
FF-3 Gary Ray Fraley
Thru #55

COUNTER MOTION TO DISMISS CASE
1-13-15 [50]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion is conditionally denied.

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

55. 14-27181-B-13 DONALD TAGGART MOTION TO CONFIRM PLAN
FF-3 Gary Ray Fraley 12-12-14 [44]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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 Motion to Confirm the Amended Plan is denied without prejudice.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee filed an opposition to the Debtor's motion.

The court finds the Second Amended Plan filed December 12, 2014 does not comply with 11 U.S.C. § 1325(a)(6) since the Debtor has not exhibited his ability to perform under the terms of the proposed amended Plan.

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

56.	12-26182-B-13 JPJ-2	EDWIN BRYDEN Michael David Croddy	OBJECTION TO CLAIM OF INSURANCE COMPANY OF THE WEST, CLAIM NUMBER 16 12-9-14 [90]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Claim has been set for hearing on the 44-days notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to the Proof of Claim is sustained.

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

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Insurance Company of the West ("Creditor"), Proof of Claim No. 16-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be for unpaid workers compensation premium in the amount of $3,750.00. Objector asserts that the claim was filed after the date set for filing claims pursuant to Federal Rule Bankruptcy Procedure 3002(c) and/or the terms of the debtor's confirmed plan, and no request for extension of time was filed or approved by the Court.

Insurance Company of the West indicates in its Proof of Claim that it was not on the list of creditors and was not aware of the bankruptcy filing until after the bar date. However, Insurance Company of the West has not filed a response to Trustee's objection as required by Local Bankr. R. 9014-1(b)(1)(A). Thus, Insurance Company of the West is considered to be in nonopposition to the Chapter 13 Trustee's objection.

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.

57. 14-30882-B-13 JESSICA RAMSEY
JPJ-1 Marc A. Caraska

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-22-14 [18]

Final Ruling: No appearance at the January 27, 2015 hearing is required.

The Objection to Exemptions has been set for hearing on the 28-day notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Objection to Exemptions is sustained.

Jan P. Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claimed exemptions of Jessica Suzanne Ramsey ("Debtor"). The Debtor has chosen to exempt her 2006 Chevrolet Silverado under California Code of Civil Procedure § 703.140(b)(2). As such, CCP § 703.140(b)(2) allows a debtor to exempt the aggregate interest, not to exceed $5,100.00 in value. Based on the Debtor's Schedule C filed on November 3, 2014, the Debtor claimed her interest in her vehicle as exempt under the CCP § 703.140(b)(2) in the aggregate amount of $10,875.00. The Debtor has over exempted under this exemption by $5,775.00.

Based on the evidence before the court, the Debtor's claim is disallowed in its entirety. The Chapter 13 Trustee's Objection to Exemptions is sustained.

58. 14-28787-B-13 SOHAIL MALIK
SJS-1 Scott J. Sagaria
Thru #59

CONTINUED MOTION TO CONFIRM PLAN
11-12-14 [23]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Motion to Confirm the 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).

The Motion to Confirm the Amended Plan is denied without prejudice.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the Debtor's motion on the grounds that the Debtor is delinquent to the Trustee in the amount of $152.00 which represents approximately one plan payment. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

59.	14-28787-B-13 SJS-1	SOHAIL MALIK Scott J. Sagaria	CONTINUED COUNTER MOTION TO DISMISS CASE 12-30-14 [33]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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

60. 14-31389-B-13 WILLIAM TOMAN
JPJ-1 Stephen N. Murphy

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-30-14 [23]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The Objection to Plan was properly set for hearing on the 14-days notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Objection to Confirmation of Plan is overruled and the Motion to Dismiss Case is denied without prejudice.

Chapter 13 Trustee opposes confirmation of the Plan on two grounds. These grounds appear to have been resolved by the Debtor.

First, the Trustee states that the Debtor has improperly used exemptions claimed under California Code of Civil Procedure § 703.140 because Debtor's domicile was located in Virginia for the 730 day period immediately preceding the filing of the petition. The Debtor has resolved this issue by removing the California exemption and instead adding the exemption claimed under 11 U.S.C. § 522(d). Pursuant to VA Code Ann. § 34-1, Debtor does not meet the residency requirements to use exemptions by the State of Virginia. See *Davis v. Maloney*, 416S.E.2d 232 (Va. 1992).

Second, the Trustee states that the Debtor has failed to provide the Trustee with the Domestic Support Obligation Checklist, thereby hindering the Trustee from performing his duties. The Debtor has provided the Trustee with two Domestic Support Obligation Checklists containing all information required by the Trustee for both of the domestic support obligation claims owed by Debtor.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

61. 11-28590-B-13 JOE/CECILIA MODESTO
CJY-2 Christian J. Younger
Thru #62

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-9-14 [85]

Final Ruling: No appearance at the January 27, 2015 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 Objection to Notice of Mortgage Payment Change is sustained, and Debtor's request for attorneys' fees and costs is denied without prejudice.

First, Residential Credit Services, Inc. ("Claimant") has miscalculated the projected escrow shortage on the RCS Notice, attempts to adjust the interest rate on Debtors' loan on the RCS Notice, and its RCS Notice conflicts with another Notice of Mortgage Payment Change filed by US Bank, N.A. just four days later. As such, Debtors request the court to deny the change in Debtors' mortgage payments as provided in the RCS Notice filed November 10, 2014, and order the ongoing mortgage payment to Claimant be set back to $3,078.37 as of December 1, 2014.

Second, Debtors point out that they have previously objected to Claimant's prior Notice of Mortgage Payment Change for very similar reasons. Debtors assert that their attorney is being forced to object again to mathematical errors that should have been caught by Claimant and its attorney, and that Debtors' attorney has been forced to spend an inordinate amount of time dealing with issues created solely by Claimant, US Bank, and their attorneys. As such, Debtors request the court to grant reasonable attorney's fees and costs.

The court will deny the change in Debtors' mortgage payments as provided in the RCS Notice filed November 10, 2014, and order the ongoing mortgage payment to Claimant be set back to $3,078.37 as of December 1, 2014.

The court will deny the request for attorney's fees and costs. If Debtors wish to pursue a claim for attorneys' fees, Debtor shall within 30 days of the issuance of this Order, file a motion for prevailing party attorney's fees, state with particularity the grounds in which Debtor is entitled to attorneys' fees, and provide sufficient evidentiary support for such requested fees.

62. 11-28590-B-13 JOE/CECILIA MODESTO
CJY-3 Christian J. Younger

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-9-14 [89]

Final Ruling: No appearance at the January 27, 2015 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 Objection to Notice of Mortgage Payment Change is sustained.

First, US Bank, N.A. ("Claimant") did not timely file its Notice of Mortgage Payment Change ("Notice"). The form for the notice and Bankruptcy Rule 3002.1 both indicate that a notice must be filed at least 21 days before the change takes effect. The US Bank, N.A. Notice was filed 14 days after the change in payment was to take effect.

Second, Claimant's Notice does not provide an evidentiary basis for the increase in interest rate on Debtors' loan. The Claimant's Notice provides that the current interest rate on Debtor's loan is 2.5% (Dkt. 91); however, Claimant's previous Notice provided an interest rate of 1% (Dkt. "doc"; filed 2/28/14).

Third, Claimant's Notice does not agree with the information provided by Residential Credit Solutions ("RCS") in its Notice of Mortgage Payment Change filed just four days before Claimant. The objection to the RCS Notice is heard under Item 61.

The court will deny Debtors' mortgage payment as provided in the US Bank Notice filed November 14, 2014, and order the ongoing mortgage payment to Claimant be set back to $3,078.37 as of November 1, 2014.

63.	14-31193-B-13 JPJ-1	PALMER COOKE Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-30-14 [22]

CASE DISMISSED JANUARY 14, 2015. MATTER REMOVED FROM CALENDAR.

64.	14-24824-B-7 ADJ-5	JOHN/JEANNETTE NOTMAN G. Michael Williams	CONTINUED MOTION TO COMPEL 11-20-14 [126]

REMOVED FROM CALENDAR BY ORDER ENTERED JANUARY 26, 2015.

65. 14-26651-B-7 KENNETH WILKINSON
14-2242
WILKINSON V. INTERNAL REVENUE SERVICE

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-20-14 [1]

66. 14-28424-B-13 MICHAEL LU
SS-4 Scott D. Shumaker

MOTION TO REFINANCE O.S.T.
1-21-15 [42]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The court issues no tentative ruling.

The Motion to Refinance 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 Motion to Refinance will be determined at the scheduled hearing.

The court will also consider at that time what appears to be a violation by attorney Scott D. Shumaker of this court's order of January 15, 2015, requiring the redaction of documents that include personal information.