UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 11, 2015 at 10:00 a.m.

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1. 14-29108-B-13 ROSEMARIE LANDRY — MOTION TO CONFIRM PLAN
MOH-3 Michael O'Dowd Hays — 12-29-14 [45]
Thru#2

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 opposes the Debtor's motion on six grounds.

First, according to the Additional Provisions, the Debtor states that the 1st and 2nd mortgages will be paid out of escrow. However, both of these loans are provided for in Class 1 and, therefore, should be paid by the Trustee in compliance with the Plan. The Trustee cannot recommend confirmation of the Plan until these inconsistencies are reconciled.

Second, according to the Additional Provisions, the Debtor states that after liens are paid, the remaining sale proceeds will be turned over to the Trustee. However, the amount of money needed to pay claims in full is minimal compared to the remaining balance that will be left in escrow.

Third, the Plan payment does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims.

Fourth, the Trustee is unable to fully assess the feasibility of the Plan because the Debtor has not provided the Trustee with a copy of her tax return for the most recent tax year a return was filed.

Fifth, the Debtor has not provided the Trustee with a Domestic Support Obligation Checklist and the Trustee is unable to perform his duties.

Sixth, the Trustee objects to payment of attorney's fees in any amount pursuant to Local Bankr. R. 2016-1(c)(2). The Debtor has not filed a Rights and Responsibilities of Chapter 13 Debtor and her attorneys.

The Trustee's grounds are well taken. The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

2. 14-29108-B-13 ROSEMARIE LANDRY COUNTER MOTION TO DISMISS CASE
MOH-3 Michael O'Dowd Hays 1-28-15 [50]

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.

3.	12-39609-B-13 ACK-1	MICHAEL/DEBRA RIETZKE Pro Se	MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC. 1-16-15 [71]

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 offer 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 Avoid Lien is granted.

This Motion requests an order avoiding the judicial lien of Beneficial California ("Creditor") against property of Michael and Debra Rietzke ("Debtors") commonly known as 107 Seafarer Ct, Folsom, California (the "Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $16,915.22. An abstract of judgment was recorded with Sacramento County on February 18, 2009, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $285,000.00 as of the date of the petition. The unavoidable consensual liens total $569,141.16 as of the commencement of this case are stated on Debtors' Schedule D. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,000.00 on Schedule C.

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

4.	14-31409-B-13 DSH-1	CHRISTOPHER GEARHART AND SOPHIA ARGO-GEARHART David S. Henshaw	MOTION TO CONFIRM PLAN 12-29-14 [19]

Final Ruling: No appearance at the February 11, 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 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

No oppositions have been filed. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

5. 14-31612-B-13 STEVEN/LEAH DREW — MOTION TO VALUE COLLATERAL OF TOYOTA FINANCIAL SERVICES AMERICAS CORPORATION
DAO-1 — Dale A. Orthner — 1-7-15 [16]
Thru #6

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Value secured claim of Toyota Financial Services ("Creditor") is sustained and the secured claim is determined to have a value of $11,900.00.

The Motion filed by Steven W. Drew and Leah M. Drew ("Debtors") to value the secured claim of Toyota Financial Services Americas Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Toyota Prius (VIN JTDKN3DU6B1359407) ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,900.00 as of the petition filing date. The vehicle had sustained damage such that the repair estimate totaled $9,335.45 (Dkt. 29, Exhibit A). The damaged sustained, even though it has been substantially repaired, has diminished the value of the vehicle. 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 lien on the Vehicle's title secures a purchase-money loan incurred sometime before February 9, 2012 [FN 1] which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,364.34. 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 $21,364.34. *See* 11 U.S.C. § 506(a).

FN 1. The Debtors and Creditor provide no information as to when the purchase-money loan actually occurred. However, Debtor's Repair Estimate for the 2011 Toyota Prius (Dkt. 29, Exhibit A) indicates that the Vehicle was dropped off for repair on February 9, 2012, more than 910 days prior to filing of the petition. It can be inferred that the Vehicle was purchased on some date before it was damaged and brought in for repair.

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

6. 14-31612-B-13 JPJ-1 — STEVEN/LEAH DREW, Dale A. Orthner — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-15-15 [21]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 offer 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 Objection is sustained and the Motion to Dismiss Case is denied without prejudice.

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan does not provide treatment for the Internal Revenue Service's priority debt and because the feasibility of the plan depends on the motion to value collateral for Toyota Financial Services Americas Corporation. Although the motion to value collateral is granted, the Plan still does not provide treatment for IRS's priority debt.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

7. 14-27616-B-13 TERRY MOON MOTION TO CONFIRM PLAN
WW-3 Mark A. Wolff 12-16-14 [61]

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 deny the Motion to Confirm the Amended Plan.

The Chapter 13 Trustee is unable to fully assess feasibility. The First Amended Plan filed on December 16, 2014 provides for treatment of Real Time Resolutions in Class 1. Pursuant to Local Bankr. R. 3015-1(c)(3), the Debtor is required to serve upon the Trustee a Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee. To date, the Debtor has not provided the Trustee with these documents. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-(c)(3).

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

8. 11-25920-B-13 SJS-2 — MATTHEW WILLIAMS AND MICHELLE ALFORD, Scott J. Sagaria — MOTION TO INCUR DEBT, 1-27-15 [66]

Tentative Ruling: No appearance at the February 11, 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 conditionally denied.

The motion seeks permission to purchase a used 2013 Jeep Compass Sport SUV 4D with approximately 45,000 miles, which the total purchase price is $19,862.75, with monthly payments of $369.37.

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

Given that a copy of the agreement was not provided to the court, the court is unable to find whether the proposed credit is reasonable. The motion is conditionally denied.

9.	14-23320-B-13 JPJ-1	ANTONIO/MARGARITA ARMENDAREZ Richard A. Chan	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 14 12-2-14 [19]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) 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 Proof of Claim Number 14-1 of Cavalry SPV I, LLC is sustained and the claim is disallowed in its entirety.

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 Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,188.09. Objector asserts that the statute of limitations for collection of this debt has expired. The last payment on account was made on November 21, 2008, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is four (4) years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1).

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

10. 15-20122-B-13 JOHN DYSART
MMM-1 Mohammad M. Mokarram

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
1-12-15 [8]

Tentative Ruling: The Motion to Extend Automatic Stay 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 Extend Automatic Stay is conditionally granted.

John D. 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 30 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.

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

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to conditionally extend the automatic stay. Although the Debtor has not provided evidence of the financial constraints due to health-related issues, the Debtor has provided evidence of the financial constraints experienced by a rental security deposit. The Debtor's expenses due to the move tend to show that he was unable to pay the Chapter 13 Trustee in the prior case, and that the lack of those unexpected events now should result in Debtor being able to succeed in the present plan.

The motion is conditionally granted and the automatic stay is extended for all purposes, as to all parties, with the applicable conditions being as follows: the stay shall terminate upon the filing by the Trustee of a notice that the Debtor has defaulted on his Plan payment obligation.

11. 14-31623-B-13 JAMES/NANCY LOCKWOOD — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Stephen N. Murphy — 1-14-15 [26]

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

The Objection has been withdrawn by the Chapter 13 Trustee and there are no other oppositions filed.

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

12. 14-31723-B-13 JOHN CERATO
MRL-1 Mikalah R. Liviakis

MOTION TO AVOID LIEN OF THE GOLDEN 1 CREDIT UNION
1-14-15 [16]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Golden 1 Credit Union ("Creditor") against property of John Cerato ("Debtor") commonly known as 2013 Benita Drive, Unit #3, Rancho Cordova, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of approximately $49,476.23. An abstract of judgment was recorded with Sacramento County on September 4, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $65,000.00 as of the date of the petition. The unavoidable consensual liens total $46,126.00 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 $18,874.00 on amended Schedule C (note Dkt. 21 lists the exemption as $19,000.00).

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).

13. 14-30028-B-13 BRIAN/KRISTINE HURLEY
AFL-3 Ashley R. Amerio
Thru #15

MOTION TO VALUE COLLATERAL OF COUNTY OF SACRAMENTO
12-30-14 [42]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Motion to Value has been set for hearing on the 28 day's 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 secured claim of County of Sacramento ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Brian L. Hurley and Kristine M. Hurley ("Debtor") to value the secured claim of County of Sacramento ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 7939 Hanson Ave., Citrus Heights, California ("Property"). Debtors seeks to value the Property at a fair market value of $252,865.00 as of the petition filing date. As the owner, 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 $283,626.00. Creditor's second deed of trust secures a claim with a balance of approximately $255.92. Therefore, Creditor's claim secured by a utility lien 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.

14. 14-30028-B-13 BRIAN/KRISTINE HURLEY MOTION TO CONFIRM PLAN
AFL-4 Ashley R. Amerio 12-30-14 [47]

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 Plan is denied without prejudice.

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Trustee is unable to fully assess the feasibility of the plan or effectively administer the plan as there is a discrepancy as to the amount of the attorney's fees and because the feasibility of the plan depends on the motion to value collateral for County of Sacramento. Although the motion to value collateral is granted, the Plan has not corrected the discrepancy as to the amount of the attorney's fees.

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

15. 14-30028-B-13 BRIAN/KRISTINE HURLEY COUNTER MOTION TO DISMISS CASE
AFL-4 Ashley R. Amerio 1-28-15 [53]

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.

16. 14-21629-B-13 JPJ-1 — ROBERT MOSIER AND LYNNE CALVIN-MOSIER — David P. Ritzinger — OBJECTION TO CLAIM OF ASSET ACCEPTANCE, LLC, CLAIM NUMBER 2 — 12-2-14 [19]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) 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 Proof of Claim Number 2-1 of Asset Acceptance, LLC is sustained and the claim is disallowed in its entirety.

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 Asset Acceptance, LLC ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $14,447.47. Objector asserts that the statute of limitations for collection of this debt has expired. The last payment on account was made on March 27, 2002, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is four (4) years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1).

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

17. 13-30333-B-13 MICHAEL/SUZANNE FINCH MOTION TO MODIFY PLAN
DEF-2 David Foyil 12-18-14 [42]

Final Ruling: No appearance at the February 11, 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.

No oppositions have been filed. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

18. 14-23633-B-13 LESLIE VAN SYCKEL MOTION TO MODIFY PLAN
SAC-2 Scott A. CoBen 12-12-14 [38]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 35-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 deny the Motion to Confirm the Modified Plan.

The debtor is delinquent to the Trustee in plan payments and has not become current by the time of this hearing.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

19. 14-28933-B-13 ANA RODRIGUEZ
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-22-14 [22]

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

The Objection is sustained and the Motion to Dismiss Case is denied without prejudice.

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on two grounds.

First, the Plan filed on September 3, 2014 proposes an impermissible modification of the secured claim of Wells Fargo Bank of the holder of the first deed of trust on the Debtor's residence. The Plan also does not provide for the payment of the mortgage arrears totaling $32,000.00.

Second, for these reasons stated above, the Trustee calculates that the plan will take approximately 222 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 Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

20.	10-37135-B-13 ALEKSEI/LARISA BAZANOV 14-2301 BAZANOV ET AL V. CHASE BANK USA, NATIONAL ASSOCIATION **Thru #21**	CONTINUED STATUS CONFERENCE RE: COMPLAINT 10-31-14 [1]

21. 10-37135-B-13 ALEKSEI/LARISA BAZANOV
14-2301 SLH-4
BAZANOV ET AL V. CHASE BANK USA, NATIONAL ASSOCIATION

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-23-14 [11]

Tentative Ruling: The court issues no tentative ruling.

The Motion for Entry of Default Judgment 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).

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.

22. 14-26647-B-13 RONALD/KELLY BRIGGS ORDER TO SHOW CAUSE
James L. Brunello 1-20-15 [100]

Tentative Ruling: The Order to Show Cause was served by the Clerk of the Court on Ronald V. Briggs and Kelly L. Briggs ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 20, 2015. The court computes that 22 days' notice has been provided.

The Order to Show Cause was issued because Debtors' amended Schedule D filed on November 12, 2014 (Dkt. 88) and amended Schedule D filed January 6, 2015 (Dkt. 97) both reflect secured debt totaling $1,271,608.50. This exceeds the statutory limit of $1,149,525.00. 11 U.S.C. § 109(e).

The court's decision is to conditionally discharge the Order to Show Cause.

The Debtors have shown cause, in writing filed on February 3, 2015, that their case should not be dismissed due to the fact that judgment creditor Union Bank's claims is listed as unsecured rather than secured on the basis that the judgment lien is an avoidable preference. The Order to Show Cause is conditionally discharged and the bankruptcy case is not dismissed, provided that an adversary proceeding to avoid the judgment lien of Union Bank is filed within 45 days of the court's order on the Order to Show Cause.

23. 10-28849-B-13 JEFFREY/AMY BOOTH CONTINUED MOTION TO MODIFY PLAN
ADR-3 Justin K. Kuney 9-24-14 [48]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 35-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 deny the Motion to Confirm the Modified Plan.

The original hearing on Debtors' Motion to Modify the Chapter 13 Plan was continued from November 12, 2014 to allow the Debtors' Attorney to file a Motion to Approval Additional Attorney Fees. However, because Debtors' attorney has not yet filed a motion for approval of his fees, the Trustee is still unable to determine if the monthly payment specified in the Plan is reasonable compensation for actual, necessary services rendered. Additionally, the Plan does not properly account for all the payments the Debtors have paid to the Trustee to date. Finally, the Debtors are delinquent to the Trustee in the amount of $200.00 under the terms of the Modified Plan, which represents approximately 1 Plan payment.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

24. 14-24049-B-13 KRISTIN AUSTIN MOTION TO CONFIRM PLAN
MWB-7 Mark W. Briden 12-22-14 [96]

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 to Confirm the Amended Plan, with the following language to be included in the order: The Debtor has paid a total of $7,200.00 to the Trustee through January 25, 2015. Commencing February 25, 2015, monthly Plan payments shall be $100.00 for the remainder of the Plan.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

25.	11-26750-B-13 SDB-3	REMIGIO/MARILYN BERNAL W. Scott de Bie	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 1-5-15 [67]

CONTINUED TO 2/10/15 AT 2:00 P.M. IN DEPARTMENT C, COURTROOM 33

26. 14-31850-B-13 TUA/SHING VANG
JPJ-1 Peter G. Macaluso
Thru #27

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-15-15 [23]

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

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

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on two grounds. These grounds have been resolved.

First, the Trustee states that the Plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. On January 23, 2015, the Debtors amended the exemptions that arose from a software error. The Debtors' Plan payment will increase by $25.00, which resolves the Chapter 7 liquidation analysis issue.

Second, the Trustee states the plan depends on the motion to value collateral for Ocwen Loan Servicing set for hearing on February 11, 2015. There is no motion to value collateral for Ocwen Loan Servicing scheduled for that date; however, there is a motion to value collateral for OneWest Bank, N.A./Indymac Mortgage Services on that date, which the court has granted no final ruling. If the feasibility of the Plan depends on the granting of the motion to value collateral of OneWest Bank, N.A./Indymac Mortgage Services, then the grounds for Trustee's opposition of confirmation of the Plan is resolved.

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

27. 14-31850-B-13 TUA/SHING VANG — MOTION TO VALUE COLLATERAL OF ONEWEST BANK, N.A./INDYMAC MORTGAGE SERVICES
PGM-1 Peter G. Macaluso — 1-9-15 [15]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Motion to Value has been set for hearing on the 28 day's 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 secured claim of [name of creditor] ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Tua T. Vang and Shing M. Vang ("Debtors") to value the secured claim of OneWest Bank, N.A./IndyMac Mortgage Services ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 9849 Ruddy Duck Way, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owner, 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 $321,454.39. Creditor's second deed of trust secures a claim with a balance of approximately $73,153.00. 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.

28. 10-24351-C-13 ROBERT/MICHELLE REID
12-2392
REID ET AL V. BANK OF AMERICA, N.A. ET AL

MOTION FOR JUDGMENT ON THE PLEADINGS
1-5-15 [108]

ADV. CASE TRANSFERRED TO DEPT. C

29. 13-23951-B-13 JOSEPH/ALONA PANG MOTION TO SELL
TJW-2 Timothy J. Walsh 1-6-15 [30]

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the "Property" described as 145 Bidwell Way, Vallejo, California.

The proposed purchaser of the Property is Rose Keller, who will purchase the Property in the short sale amount approved at $226,000.00.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate and should be granted subject to any qualified overbids.

30. 14-31751-B-13 CULVER PIERRE
JPJ-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-15-15 [22]

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

The Objection has been withdrawn by the Chapter 13 Trustee and there are no other oppositions filed.

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

31. 14-29753-B-13 THOMAS/BECKY BOYES — COUNTER MOTION TO DISMISS CASE
LBG-1 Lucas B. Garcia — 1-28-15 [41]

Tentative Ruling: The motion is conditionally denied.

Debtors have filed a non-opposition to Trustee's conditional motion to dismiss. 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.

32. 14-29753-B-13 THOMAS/BECKY BOYES — MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia — 12-30-14 [35]

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 deny the Motion to Confirm the Amended Plan.

The Debtors are delinquent to the Trustee in the amount of $5,945.52, which represents approximately 2 Plan payments, and the Chapter 13 Trustee is unable to fully assess the feasibility of the Plan or effectively administer the Plan filed December 30, 2014. Furthermore, Debtors filed a non-opposition to Trustee's opposition.

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

33. 14-31853-B-13 PETER ZUBENKO
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-15-15 [19]

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

The Objection is sustained and the Motion to Dismiss Case is conditionally denied without prejudice.

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor has not provided copies of certain items relating to Debtor's business including, but not limited to, proof of all required insurance. The Trustee is unable to determine if the business is solvent and necessary for reorganization. The debtor has failed to comply with 11 U.S.C. § 521.

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

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

34. 14-30057-B-13 ANDREW HANZO — MOTION TO CONFIRM PLAN
Thru #35 Tien D. Duong — 12-19-14 [51]

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 the motion to confirm plan on five grounds.

First, the Trustee is unable to fully assess the feasibility of the Plan or effectively administer the Plan because the Plan does not specify the duration of the payments under Section 1.03.

Second, the Trustee is unable to fully assess the feasibility of the Plan or effectively administer the Plan because the terms for payment of Debtor's attorney's fees are unclear.

Third, the Trustee objects to payment of attorney's fees in any amount pursuant to Local Bankr. R. 2016-1(c)(2) because the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

Fourth, the Debtor is delinquent to the Trustee in approximately 1.3 Plan payments.

Fifth, the Trustee calculates that the Plan will take approximately 75 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 Trustee's grounds are well taken. The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

35. 14-30057-B-13 ANDREW HANZO
Tien D. Duong

COUNTER MOTION TO DISMISS CASE
1-28-15 [69]

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.

36. 10-50759-B-13 MICHAEL CAREY MOTION TO MODIFY PLAN
JSO-2 Jeffrey S. Ogilvie 12-30-14 [48]

Final Ruling: No appearance at the February 11, 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.

No oppositions have been filed. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

37. 14-31759-B-13 JPJ-1 — WILLIAM BARRANTES, Richard L. Sturdevant — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 1-15-15 [22]

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

The Objection is sustained and the Motion to Dismiss Case is denied without prejudice.

Jan P. Johnson, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Additionally, the Plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payments to unsecured creditors as the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form 22C-1 and Form 22C-2) is incomplete.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

38. 14-23662-B-13 DAVID/SUSAN YOUNGER — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 5-1
JPJ-1 C. Anthony Hughes — 12-2-14 [21]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) 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 Proof of Claim Number 5-1 of Cavalry SPV, LLC is sustained and the claim is disallowed in its entirety.

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 Cavalry SPV, LLC ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,969.11. Objector asserts that the statute of limitations for collection of this debt has expired. The last payment on account was made on February 13, 2008, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is four (4) years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1).

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

39. 14-26065-B-13 DEF-5 | WILLIAM MARTIN AND MELANIE LAIRD-MARTIN
David Foyil | MOTION TO CONFIRM PLAN
12-22-14 [78]

Final Ruling: No appearance at the February 11, 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 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

No oppositions have been filed. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

40. 14-30072-B-13 STARR SHINE MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis 12-29-14 [24]

Final Ruling: No appearance at the February 11, 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 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

No oppositions have been filed. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

41. 08-30673-B-13 RAYMOND MORENO
14-2314
MORENO V. UNITED STATES OF AMERICA, INTERNAL REVENUE
Thru #42

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
11-29-14 [12]

42. 08-30673-B-13 RAYMOND MORENO
14-2314 USA-1
MORENO V. UNITED STATES OF AMERICA, INTERNAL REVENUE

MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION FOR SUMMARY JUDGMENT
1-5-15 [17]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Dismiss Adversary Proceeding or Motion for Summary Judgment 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).

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. 10-28281-B-13 TRINI/ANGELA WHITTAKER
LLL-10 Lawrence Lockwood

MOTION TO RECIND REAFFIRMATION AGREEMENT AND SURRENDER RESIDENCE
12-28-14 [311]

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

The Motion is denied without prejudice.

The Debtors' motion is unclear and vague. The Trustee is unable to properly oppose or respond.

44. 10-51981-B-13 MADELEINE NOYER
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF J.P. MORGAN CHASE, N.A.
1-8-15 [81]

Final Ruling: No appearance at the February 11, 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 secured claim of J.P. Morgan Chase, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Madeleine M. Noyer ("Debtor") to value the secured claim of J.P. Morgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 913 La Sierra Drive, Crowley, TX ("Property"). Debtor seeks to value the Property at a fair market value of $95,990.00 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 $101,120.00. Creditor's second deed of trust secures a claim with a balance of approximately $29,619.21. 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.

45. 14-29884-B-13 RICARDO/EMILY ORDORICA MOTION TO CONFIRM PLAN
JME-2 Julius M. Engel 12-30-14 [34]
Thru #46

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 the motion to confirm plan on three grounds.

First, the Plan does not comply with 11 U.S.C. § 1325(b)(4). The proposed duration of payments is only 58 months and the Plan does not propose payment in full of the allowed unsecured claims.

Second, the Plan payment does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims

Third, the Trustee is unable to effectively administer the Plan or ensure that all future Plan payments are made timely.

The Trustee's grounds are well taken. The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

46. 14-29884-B-13 RICARDO/EMILY ORDORICA COUNTER MOTION TO DISMISS CASE
JME-2 Julius M. Engel 1-26-15 [42]

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.

47.	09-47289-B-13 MOH-2	MIAH BASDEN AND MARCI COOMBS Michael O'Dowd Hays	MOTION TO CONCLUDE CHAPTER 13 CASE AND/OR MOTION FOR ENTRY OF DISCHARGE 12-29-14 [52]

Tentative Ruling: The Motion to Conclude Chapter 13 Case and for Entry of Discharge has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion to Conclude Chapter 13 Case and for Entry of Discharge is denied without prejudice.

The Chapter 13 Trustee opposes Debtors' motion on four grounds.

First, the Debtors have made only 56 plan payments and only a 20.85% dividend to unsecured creditors has been paid.

Second, Debtors' motion cites no legal authority for granting relief sought. Since the order confirming plan is res judicata, the Debtors cannot change those plan terms absent a motion to modify filed pursuant to 11 U.S.C. § 1329.

Third, when Debtors' motion will be heard, the case will be in the 62nd month and the Debtors will not be permitted to modify the plan under 11 U.S.C. § 1329.

Fourth, since the Debtors' have not completed their confirmed Plan, they are not eligible for discharge at this time. In addition, the Debtors have not asserted any facts or legal authority to prove that they are eligible for hardship discharge under 11 U.S.C. § 1328(b) either.

The Trustee's grounds are well taken. The Debtors' motion is denied without prejudice.

48. 14-23491-B-13 VIRGINIA LAROT — OBJECTION TO CLAIM OF PATELCO CREDIT UNION, CLAIM NUMBER 6
JPJ-2 Marc A. Carpenter — 12-2-14 [37]

Final Ruling: No appearance at the February 11, 2015 hearing is required.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) 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 Proof of Claim Number 6-1 of Patelco Credit Union is sustained and the claim is disallowed in its entirety.

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 Patelco Credit Union ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $14,874.89. Objector asserts that the statute of limitations for collection of this debt has expired. The last payment on account was made on April 29, 2009, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is four (4) years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1).

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

49.	11-29093-B-13 SDB-5	BENJAMIN/JANET SUGAY W. Scott de Bie	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 1-5-15 [78]

CONTINUED TO 2/10/15 AT 2:00 P.M. IN DEPARTMENT C, COURTROOM 33

50. 11-40498-B-13 FREDERICK/MARSHA AIKENS — MOTION TO APPROVE LOAN MODIFICATION
CJO-1 Robert L. Goldstein — 1-13-15 [88]

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 Bank of New York Mellon, as Trustee for CIT Mortgage Loan Trust 2007-1, and its successor and or assignees ("Movant") seeks court approval for Debtor to enter into a loan modification with Movant. This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

51. 13-33598-B-13 PAMELA JOSEPH — CONTINUED MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 9-25-14 [30]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 35-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 Modified Plan is denied for undue delay and prejudice to creditors.

The feasibility of the Plan depends on the Debtor obtaining a loan modification with Wells Fargo Bank/Specialized Loan Servicing. The Debtor has submitted documentation and contacted the creditor regarding the loan modification throughout 2014 to no avail. On November 4, 2014, The Debtor requested a ninety (90) day period to provide the Trustee with the results from the venture. No documentation has yet been provided.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

52. 14-25477-B-13 TERRI BANKS MOTION TO INCUR DEBT O.S.T.
PLC-6 Peter L. Cianchetta 2-5-15 [68]

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 to Incur Debt is conditionally denied.

The motion seeks permission to purchase a used 2013 Kia Sorento, the total purchase price of which is $26,602.03, with monthly payments of $586.39.

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).

Given that a copy of the agreement was not provided to the court, the court is unable to find whether the proposed credit is reasonable. The motion is conditionally denied.