UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 18, 2015 at 10:00 a.m.

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1. 11-48405-B-13 VICTOR/LINDA DOWDY — MOTION TO MODIFY PLAN
EAT-1 Ethan A. Turner — 1-6-15 [47]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the Motion to Confirm the Modified Plan.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because it does not properly account for all payments that the Debtors have paid to date. However, the Trustee will support the Plan if the following modification is included in the order confirming Plan: "The Debtors have paid a total of $22,986.00 to the Trustee through January 25, 2015. Commencing February 25, 2015, monthly Plan payments shall be $410.00 for the remainder of the Plan."

The court will include the language in its order confirming the Plan. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

2. 10-20413-B-13 JAMES HICKS MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 1-13-15 [43]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. No oppositions to the proposed modifications have been filed.

The modified Plan adjusts the percentage paid to Debtor's Class 7, allowed general unsecured creditors, from a 9% dividend to a 17% dividend. The proposed modified Plan would enable the Debtor to complete the Plan within 60 months and would pay the allowed general unsecured creditors an amount not less than they would have been paid if the Debtor's estate was liquidated under the provisions of Title 11, United States Code, Chapter 7.

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

3. 12-26117-B-13 RICHARD/KIM CHAVEZ — MOTION TO APPROVE LOAN MODIFICATION
RDS-6 Richard D. Steffan — 2-3-15 [88]

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

The Motion to Approve the Loan Modification is granted.

The Motion to Approve Loan Modification filed by Richard S. Chavez and Kim A. Chavez ("Debtors") seeks court approval to finalize an offered loan modification on their first, and only, mortgage with Nationstar Mortgage, LLC ("Creditor"), which is secured with Debtors' residence. The three month trial period offer was approved by the court on motion heard on October 28, 2014 and granted on October 31, 2014 (Dkt. 86).

Creditor has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,861.61 a month to $1,600.54 a month. The modification will change the interest from 4.15% ARM to a fixed interest of 4.125%. Additionally, payment includes escrow charges of $307.78, there is no loss mitigation but the arrearages are put to the end of the loan (making the principal $303.646.38), and the term of the loan is extended to December 1, 2054. The loan will continue to be secured solely by the Debtors' residence.

The Motion is supported by the Declaration of Richard S. Chavez. 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.

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 the Loan Modification is granted.

4. 15-20217-B-13 MET-1 **Thru #5**
MICHAEL/ROSE LARIVIERE
Mary Ellen Terranella
MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
1-21-15 [18]

CONTINUED TO 2/23/15 AT 1:30 P.M. IN DEPARTMENT A.

5. 15-20217-B-13 MET-2
MICHAEL/ROSE LARIVIERE
Mary Ellen Terranella
MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
1-21-15 [12]

Final Ruling: No appearance at the February 24, 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 Citibank (South Dakota) N.A. ("Creditor") against property of Michael Q. LaRiviere and Rose M. LaRiviere ("Debtors") commonly known as 1466 Valle Vista Avenue, Vallejo, California (the "Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $12,083.99. An abstract of judgment was recorded with Solano County on December 20, 2010, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition. The unavoidable consensual liens total $362,142.00 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)(1)(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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 14-30623-B-13 KRISTIN BROWN — MOTION TO VALUE COLLATERAL OF
CMO-1 Cara M. O'Neill — CARFINANCE.COM
Thru #8 — 12-21-14 [20]

Tentative Ruling: The Motion to Value secured claim 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.

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 CarFinance.com ("Creditor") is denied and the secured claim is determined to have a value of $15,343.16.

The Motion filed by Kristin Brown ("Debtor") to value the secured claim of CarFinance.com ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Kia Forte ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,906.00 as of the petition filing date. 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).

Creditor opposes the motion on the grounds that the lien on the Vehicle's title secures a purchase-money loan incurred on June 4, 2012, which is less than 910 days prior to filing of the petition on October 28, 2014. The purchase money debt on a motor vehicle acquired for the Debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtor's motion to value the collateral is denied.

7. 14-30623-B-13 KRISTIN BROWN MOTION TO CONFIRM PLAN
CMO-2 Cara M. O'Neill 1-8-15 [33]

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.

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 Confirm the Amended Plan is denied without prejudice.

Chapter 13 Trustee Jan P. Johnson opposes the Debtor's motion on two grounds:

First, feasibility of the Plan depends on the granting of Debtor's motion to value collateral for CarFinance.com. The Debtor's motion to value collateral has been denied.

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

Additionally, Creditor CarFinance.com opposes the Debtor's motion on the grounds that purchase money debt on the motor vehicle was incurred within 910 days before the bankruptcy filing. The purchase money debt on a motor vehicle acquired for the Debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, as the court has determined it does here, the entire amount of the debt on the motor vehicle must be paid under the Plan and not just the collateral's replacement value.

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

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

8. 14-30623-B-13 KRISTIN BROWN
CMO-2 Cara M. O'Neill

OBJECTION TO CLAIM OF CARFINANCE.COM, CLAIM NUMBER 2
12-21-14 [23]

Tentative Ruling: The Objection to 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Objection to Proof of Claim Number 2-1 of CarFinance.com is overruled.

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).

Kristin Brown, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of CarFinance.com ("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 approximately $15,606.85. Objector asserts that she is only responsible for paying the replacement value of the property through her Chapter 13 plan, which Objector asserts as being $11,906.00 as a secured claim, with the remaining $3,700.85 to be paid as a non-priority, unsecured claim.

Creditor responds to the objection on the grounds that purchase money debt on the motor vehicle was incurred within 910 days before the bankruptcy filing. The purchase money debt on a motor vehicle acquired for the Debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under the Plan and not just the collateral's replacement value.

Because the purchase money debt was incurred within 910 days before the bankruptcy filing, 11 U.S.C. § 506 does not apply. 11 U.S.C. § 1325(a)(9). The Creditor's Claim is not disallowed and the Objection to the Creditor's proof of claim is overruled.

9.	14-32029-B-13 JPJ-1	RONALD DENTON Candace Y. Brooks	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-28-15 [15]

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 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 court's decision is to sustain the objection.

Chapter 13 Trustee Jan P. Johnson objects to confirmation of the Debtor's Plan on the basis that the Debtor failed to appear at the Meeting of Creditors set for January 22, 2015 as required by 11 U.S.C. § 343. The Trustee cannot recommend confirmation of a Plan prior to the examination of the Debtor under oath.

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

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

10. 14-28637-B-7 RALPH/CHRISTINA CONCHAS MOTION TO RECONSIDER
JBJ-2 Julius M. Engel 1-30-15 [29]

CASE CONVERTED ON 2/03/15

Tentative Ruling: The court issues no 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.

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.

11. 13-35745-B-13 PATRICIA KLINE — MOTION TO CONFIRM PLAN
JLK-4 James L. Keenan — 12-30-14 [75]

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.

Chapter 13 Trustee Jan P. Johnson opposes the Debtor's motion because the feasibility of the Plan depends on the Debtor selling her vacation property by the 37th month of her Plan to pay all her claims in full. The Debtor has not provided any information as to why it will take 37 months to sell her vacation property rather than pay her unsecured creditors within a reasonable period of time, which should be no more than one year. Additionally, according to Debtor's exhibit, the realtor's broker price opinion only reflects the property's current fair market value. This comparative analysis of the property's equity may not be accurate at the end of the completion of the Plan. The Debtor has not carried her burden of showing that the Plan complies with 11 U.S.C. § 1325(a)(6).

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.

12. 11-20147-B-13 JOSEPH/ALICIA FREIDSON
NLG-1 Gerald B. Glazer

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-15 [105]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

The Motion for Relief From the Automatic Stay is granted.

The Bank of New York Mellon ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8190 Walnut Hills Way, Fair Oaks, California (the "Property"). Movant has provided the Declaration of Melissa Black ("Black Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. There are nineteen (19) post-petition defaults, with a total of $48,155.71 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this property is determined to be $517,040.14 (including $427,620.14 secured by Movant's first deed of trust), as stated in the Black Declaration and Schedule D filed by Joseph L Freidson and Alicia L. Freidson ("Debtors"). The value of the Property is determined to be $340,000.00, as stated in Schedules A and D filed by Debtors.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

No other or additional relief is granted by the court.

13. 12-39447-B-13 CLINTON/JEANA PALMER MOTION TO MODIFY PLAN
ACW-2 Andy C. Warshaw 1-8-15 [67]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee Jan P. Johnson.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

First, the Trustee is unable to effectively administer the Plan or ensure that all future Plan payment are made timely. The Plan filed on January 2, 2015 does not properly account for all payments the Debtors have paid to the Trustee to date. Should the court grant this motion, the Trustee requests that the order state the following: "The Debtors have paid a total of $61,987.76 to the Trustee through February 4, 2014. Commencing February 25, 2015, monthly plan payments shall be $2,088.00 for the remainder of the Plan."

Second, the Plan payment in the amount of $2,088.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installment due on class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The monthly dividends consist of $450.00 for administrative expenses, $1,600.00 for the Class 1 ongoing mortgage, $310.25 for Class 1 arrears dividend, and $40.00 for Class 2 dividends. The aggregate of these monthly amounts plus the Trustee's fee is $2,554.00. The Plan does not comply with Section 4.02 of the mandatory form Plan.

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

14. 14-32047-B-13 LE AIRHEART — OBJECTION TO CONFIRMATION OF PLAN BY NISSAN MOTOR ACCEPTANCE CORPORATION
APN-1 Oliver Greene — 1-22-15 [31]

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 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 court's decision is to overrule the Objection; however, the Plan is not confirmed.

Nissan Motor Acceptance Corporation ("Creditor") opposes confirmation of the Plan on the basis that the Plan does not allow Creditor to receive the fully secured sums that are due and owing to it.

Creditor asserts that the amount of its secured claim in the 2010 Nissan Armada (VIN 5N1AA0ND4AN618516) is $35,750.54, but does not provide any evidence to support the basis for this amount, and objects to the $19,737.00 claim amount listed in Debtor's proposed Plan. Debtor categorizes Creditor's collateral as a Class 2 claim not reduced based on value of collateral, which appears to be a misclassification since this claim is being reduced to the Debtor's asserted valuation of the subject vehicle and the Creditor's secured claim (Dkt. 6). Creditor further argues that should it be forced to accept a low valuation of its secured claim, its security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use.

Additionally, Creditor objects to the $370.21 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Creditor's security will depreciate at a much higher rate than that at which Creditor will receive adequate protection payments under the Plan. But again, Creditor has not submitted evidence to support its valuation of its collateral.

The objection is overruled; however, pending classification of the Creditor's collateral and a properly noticed motion to value that collateral, the Plan is not confirmed.

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

15.	14-31957-B-13 JPJ-1	DEAN/JANICE DODSON Mikalah R. Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-28-15 [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 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 no other objections or oppositions are filed.

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

16. 14-30058-B-13 PAUL/ALICE SALINAS — MOTION TO CONFIRM PLAN
LRR-1 Len ReidReynoso — 12-11-14 [30]

CASE DISMISSED 12/19/14

17. 13-31962-B-13 KEVIN CLARK — MOTION TO MODIFY PLAN
JPJ-2 Mary Ellen Terranella — 12-30-14 [39]

CASE DISMISSED 1/21/15

18.	11-44664-B-13 JPJ-3	FRANCES SILVA Justin K. Kuney	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12-18-14 [44]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

The Objection is sustained and the claimed exemptions are disallowed.

The Trustee objects to the Debtor exempting $500,000.00 using California Code of Civil Procedure § 703.140(b)(11)(E) as it is unclear if this exemption is proper or excessive. The Trustee has been provided a copy of the complaint regarding the "Wrongful Termination Suit Against California Department of Motor Vehicles" and, while it appears that there will be compensation for the loss of future earnings to which this exemption would be proper, there is no mention of a specific amount in the complaint so the Trustee is unable to assess if the amount claimed by the Debtor is excessive. The Trustee has been in contact with the Debtor's attorney to obtain further information; however the Debtor's attorney has not provided the Trustee with additional information.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

19.	11-34165-B-13 KFS-4	GEORGE/GAIL ANDERSON Karl-Fredric J. Seligman	AMENDED MOTION TO SET ASIDE DISMISSAL OF CASE 12-31-14 [93]

CASE DISMISSED 11/4/14

Tentative Ruling: The court issues no 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.

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.

20. 14-29780-B-13 CALVIN/SHARON BUFFO MOTION TO CONFIRM PLAN
BB-2 Bonnie Baker 12-30-14 [39]

Final Ruling: No appearance at the February 18, 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.

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.

21.	10-28281-B-13 LLL-11	TRINI/ANGELA WHITTAKER Lawrence Lockwood	MOTION FOR COMPENSATION FOR LAWRENCE L. LOCKWOOD, DEBTORS' ATTORNEY 1-12-15 [317]

Tentative Ruling: The Motion for Compensation 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion for Compensation is denied without prejudice.

Lawrence L. Lockwood, the Attorney for the Debtors ("Attorney"), has filed a motion for payment of the remaining fees due concerning the balance of original petition fees and for additional attorney's fees. The Attorney has already been paid $1,226.00 and there is a remaining balance of $1,774.00 of the original petition fees. The additional fee is in the amount of $1,130.00. The Attorney provides no period for which the original fees are requested; the period for which the additional fees are requested is December 26, 2014.

Jan P. Johnson, the Chapter 13 Trustee, has filed opposition to the motion, asserting that the Attorney is not entitled to any fees being requested in the motion. The Trustee asserts that the Attorney has opted out of the guidelines for payment of attorney's fees as specified in the General Order 05-03 and, accordingly, the filing motion must be in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Additionally, the Trustee asserts that the Attorney has not provided any time sheets to support the request for payment of his original fee balance of $1,774.00, and that the time sheet provided to support the request for payment of additional fees of $1,130.00 is unclear, unnecessary, and should not be considered "extraordinary" work for which the Attorney should be compensated. The Trustee believes that the fees of $1,226.00 that have already been paid to the Attorney are more than reasonable to compensate the Attorney for the necessary work performed in the case to date.

The Attorney has filed a response to the Trustee's opposition, but does not resolve the concerns raised by the Trustee. However, the Attorney does direct the court to the Declaration of the Debtors (Dkt. 320), in which Debtors acknowledge that the amount of $1,774.00 is due and owing to the Attorney and that they agree to the payment of additional fees not to exceed $1,130.00.

Despite the fact that the Debtors acknowledge the fees due and owing to the Attorney, the court finds that the Trustee's points are well taken. The Attorney has not provided any time sheets to support the request for payment of his original fee balance, and the additional fees do not appear to be extraordinary work for which the Attorney should be compensated.

22. 14-30481-B-13 TERRY/MARLYS ARNOLD MOTION TO CONFIRM PLAN
RHM-1 Robert Hale McConnell 12-29-14 [27]

Thru #23

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.

The Debtors' motion is opposed by Chapter 13 Trustee Jan P. Johnson and Creditor Beverly Menicucci. The Debtors have provided a response to the Trustee's opposition.

Opposition by Chapter 13 Trustee

The Chapter 13 Trustee opposes the Debtors' motion on two grounds:

First, feasibility of the Plan depends on the Debtors obtaining a reverse mortgage. No evidence has been presented regarding their pending reverse mortgage pursuant to the additional provisions as stated in Section 6 of the amended plan filed October 28, 2014.

Second, the Trustee is unable to fully assess feasibility or effectively administer the estate because the Plan is unclear and ambiguous since Section 6 of the amended Plan filed October 28, 2014 does not state what claims will be paid in full once a reverse mortgage is obtained.

The Trustee requests that the court enter an order denying confirmation of the Debtors' Plan and an order dismissing the case unless the Debtor obtains confirmation of an amended Plan within 75 days of the date of entry of the order denying confirmation of the Debtors' Plan.

Opposition by Creditor Beverly Menicucci

Creditor Beverly Menicucci, who holds a deed of Trust securing a note concerning real property which is Debtors' principal place of residence, opposes the Debtors' motion on the grounds that Debtors' Plan is not feasible. Creditor argues that the Debtors do not have sufficient or regular income to make regular payments or cure Creditor's loan through the Plan, the Plan underestimates the arrears due to Creditor, the Plan seeks to modify the Creditor's loan in violation of 11 U.S.C. § 1322(b)(2), and the Plan is proposed in bad faith and violates 11 U.S.C. § 1325.

Response by Debtors

The Debtors respond to the Trustee's opposition and submit with its response a the Declaration of Steven Arnold ("Arnold Declaration"), son of the Debtors.

The Arnold Declaration indicates that a first reverse mortgage was pending when the case was filed, but that the lender had withdrawn from proceeding with that reverse mortgage. Debtors have now obtained a different lender for a second reverse mortgage (Dkt. 41, p. 6 "Reverse Mortgage Application Analysis Security Lending").

Additionally, the Arnold Declaration provides that Mr. Steven Arnold has assisted his parents in the making of payments to the Trustee and will continue to do so. In support of this assertion, Mr. Steven Arnold has attached copies of his most recent pay advice from his employer (Dkt. 41, pp. 26-27).

Although the Debtors have provided evidence of a reverse mortgage taking place and that Mr. Steven Arnold will assist his parents in the making of payments to the Trustee, the

Trustee's and Creditors' issues are not resolved. The Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

23.	14-30481-B-13 RHM-1	TERRY/MARLYS ARNOLD Robert Hale McConnell	COUNTER MOTION TO DISMISS CASE 2-4-15 [37]

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.

24.	14-32190-B-13 JPJ-1	JUAN/PATRICIA VIGIL Mario Blanco	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 1-28-15 [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 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 court's decision is to sustain the objection.

Chapter 13 Trustee Jan P. Johnson objects to confirmation of the Debtors' Plan on the grounds that the plan payment in the amount of $3,800.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installment due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims and Class 3 secured claims. The aggregate of dividends plus the Trustee's fee is $4,671.00.

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

The Trustee's motion to dismiss is denied without prejudice. Because the Plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

25.	11-25920-B-13 SJS-2	MATTHEW WILLIAMS AND MICHELLE ALFORD Scott J. Sagaria	CONTINUED MOTION TO INCUR DEBT 1-27-15 [66]

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.

Matthew Williams and Michelle Alford ("Debtors") seek permission to purchase a used 2013 Jeep Compass Sport SUB 4D with approximately 45,000 miles, a 2.4 L 4-cylinder engine, and a 6-speed 4WD automatic transmission, the total purchase price of which is $20,862.75, 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).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The Chapter 13 Trustee has also filed a nonopposition to Debtors' motion. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.