UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

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

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1. 14-24805-B-13 IRA ROSS — MOTION TO CONFIRM PLAN
MLA-7 Mitchell L. Abdallah — 1-22-15 [104]
Thru #2

CONTINUED TO 3/16/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. McMANUS.

2. 14-24805-B-13 IRA ROSS — COUNTER MOTION TO DISMISS CASE
MLA-7 Mitchell L. Abdallah — 2-25-15 [111]

CONTINUED TO 3/16/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. McMANUS.

3. 14-29108-B-13 ROSEMARIE LANDRY MOTION TO SELL
MOH-4 Michael O'Dowd Hays 2-24-15 [59]

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

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 2875 Marigold Avenue, Chico, California to Robb Brown ("Brown") for the price of $800,000.00.

An identical motion was filed on November 25, 2014 (Dkt. 32) for hearing on December 16, 2014 and granted with the concurrence from Chapter 13 Trustee Jan P. Johnson and no appearance or opposition from any creditor (Dkt. 39). Brown is the new buyer of the real property because the original buyer had backed out.

The sale price of $800,000.00 will be sufficient to pay all of Movant's claims in full. Two claims have been filed: (1) $57,485.96 by the 1999 Moretti Family Trust for the 2nd mortgage and (2) $1,088.28 by Wells Fargo Bank for an unsecured debt. A third claim by the 1st mortgage holder, Deutsche Bank/SPS, has not been filed. However, the Debtor's attorney will file a claim on Deutsche Bank/SPS' behalf if it fails to do so for the approximate amount of $430,000.00.

Furthermore, the sale price will not only pay all of the Movant's claims in full, but it will also net the Movant an amount sufficient to purchase a more modest residence free-and-clear or at least a substantial amount to allow for a very modest mortgage.

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 creditors and the estate.

4. 14-32311-B-13 LA KEISHA MATLOCK — MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso — CAPITAL ONE AUTO FINANCE
Thru #5 — 2-2-15 [27]

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

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). 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 Capital One Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of $10,090.00.

The Motion filed by La Keisha M. Matlock ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Mercedes E500 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,090.00 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).

The lien on the Vehicle's title secures a purchase-money loan incurred on or about November 14, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $24,527.90 (Dkt. 27). 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 $10,090.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

5. 14-32311-B-13 LA KEISHA MATLOCK — MOTION TO VALUE COLLATERAL OF
PGM-3 Peter G. Macaluso — INTERNAL REVENUE SERVICE
2-2-15 [22]

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

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). 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 Internal Revenue Service ("Creditor") is denied without prejudice.

The Motion filed by La Keisha M. Matlock ("Debtor") to value the secured claim of

Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a variety of personal property listed in Schedules A and B (Dkt. 1) and Debtor's Declaration (Dkt. 24). The Debtor seeks to value the personal property at $5,503.93 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).

The lien on the variety of personal property secures a debt owed to Creditor in the approximate amount of $26,025.58. However, the value of one particular personal property cannot be determined. Specifically, Debtor lists a 2007 Mercedes GL450 ("Second Vehicle") as being subject to Creditor's lien (Dkt. 24), but the Debtor has not filed a motion to value this collateral or indicated whether this Second Vehicle was purchased within 910 days of the bankruptcy filing date. Therefore, it cannot be determined whether Creditor's claim secured by a lien on all the listed personal property is under-collateralized. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

6.	14-32513-B-13 JPJ-1	PATRICIA SHACKLEFORD C. Anthony Hughes	AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR AMENDED MOTION TO DISMISS CASE 2-25-15 [16]

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 and conditionally deny the Motion to Dismiss.

The Debtor is employed by Marvin Cassady but her income is not properly listed. The Debtor has not amended Schedule I to include her income as requested by the Chapter 13 Trustee.

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.

7. 14-31614-B-13 JAMES DEMERIN
JPJ-2 Arasto Farsad

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-30-15 [28]

Final Ruling: No appearance at the March 11, 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 to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

8.	14-27917-B-13 SJS-2	GARY DELFINO AND JAQULINE NERUTSA Scott M. Johnson	MOTION TO MODIFY PLAN 2-3-15 [45]

CONTINUED TO 3/16/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. McMANUS.

9. 15-20217-B-13 MICHAEL/ROSE LARIVIERE
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-15 [32]

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 court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

The Debtors plan will take approximately 65 months to complete, which is 29 months longer than the proposed duration of payments of 36 months. Monthly payments may only continue for an additional 6 months pursuant to § 1.03. The over-extension is due to the fact that Solano County Tax Collector filed a secured claim in the amount of $7,517.83. Debtors listed this creditor in the amount of $4,006.00.

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 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.

10. 14-32125-B-13 RICK VENTURA
JPJ-1 Richard L. Jare

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, CHAPTER 13 TRUSTEE AND/OR MOTION TO DISMISS CASE 2-5-15 [24]

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 and conditionally deny the Motion to Dismiss.

The Debtor has not filed his last 4 year of tax returns pursuant to 11 U.S.C. § 1308. Until the Chapter 13 Trustee has had an opportunity to review the Debtor's tax returns, the feasibility of the Plan cannot be assessed and it cannot be determined whether the Plan is proposed in good faith.

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.

11. 13-20226-B-13 SHIRAZ ALI MOTION TO MODIFY PLAN
LBG-201 Lucas B. Garcia 1-21-15 [177]

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.

The Debtor has not filed an updated budget with the Court that reflects changes in income and expenses. Until Amended Schedules I and J are filed with the court, the Chapter 13 Trustee cannot properly assess the feasibility of the Plan.

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

12.	14-28028-B-13 JME-2	JEFFREY NELSON AND LURDES ROSALES Julius M. Engel	CONTINUED MOTION TO CONFIRM PLAN 10-14-14 [33]

CASE DISMISSED 12/17/14

13. 14-28728-B-13 ELENA CASTRO MOTION TO CONFIRM PLAN
DCN-4 Eric J. Gravel 1-20-15 [54]

Final Ruling: No appearance at the March 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 Second Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

14. 14-29428-B-13 ROSANNE/STEPHEN AVILA MOTION TO CONFIRM PLAN
HDR-5 Harry D. Roth 1-21-15 [58]

Final Ruling: No appearance at the March 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 Second 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.

15. 15-20128-B-13 JOSHUA/MARILYN JOHNSON
ASW-1 Julius M. Engel
Thru #16

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
2-19-15 [20]

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 for reasons set forth in Item #16.

Deutsche Bank National Trust Company ("Creditor") assert that Debtors' Chapter 13 Plan understates the pre-petition arrearages. Creditor maintains that payment through the Chapter 13 Plan must be increased from $208.33 per month to approximately $1,760.79 per month in order to cure Creditor's pre-petition arrears. However, Debtors assert that in their previous confirmed Chapter 13 Plan (case no. 12-36378), the remaining balance due after 22 months of payment was $54,100.00.

The Creditor has not provide evidence for the increase in the total amount due and has not yet filed a Proof of Claim.

The Objection is overruled; however, the Plan is not confirmed for reasons set forth in Item #16.

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

16. 15-20128-B-13 JOSHUA/MARILYN JOHNSON
JPJ-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-15 [16]

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 and conditionally deny the Motion to Dismiss.

First, Debtors have not provided the Chapter 13 Trustee with a copy of their tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the plan payment in the amount of $4,814.44 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 plan will take approximately 106 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the Debtors have not amended their voluntary petition to reflect that they have filed three (3) cases in the last eight years prior to the filing of this case. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

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 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.

17. 14-29036-B-13 FOUAD MIZYED
AF-4 Arasto Farsad
Thru #18

OBJECTION TO CLAIM OF NATIONSTAR, CLAIM NUMBER 1
1-13-15 [73]

Final Ruling: No appearance at the March 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 1 of Nationstar Mortgage, 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).

Fouad Mizyed, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Nationstar Mortgage, LLC ("Creditor"), Proof of Claim No. 1 ("Claim") (Dkt. 76, pp. 1-2). The Claim is asserted to be secured in the amount of $1,098.47. Objector objects to the claim arrears portion of $1,098.47 because he believes that he is current on the payment owed to the Creditor and that no balance is owed.

The Debtor entered into a loan modification agreement with Creditor in March 2014 (Dkt. 77). The Debtor has been making payments pursuant to that agreement since execution. No payments have been missed and he is not aware of any escrow analysis changes that would have caused the instant claim.

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.

18. 14-29036-B-13 FOUAD MIZYED
AF-5 Arasto Farsad

MOTION TO CONFIRM PLAN
1-17-15 [81]

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 Fourth Amended Plan is granted and the Order shall reflect the following language: "The Plan Payments are $1,786.29 for four months (beginning October 2014), $1,779.00 for eight months (beginning February 2015), $2,135.00 for

twelve months (beginning October 2015), $2,562.00 for twelve months (beginning October 2016), $3,074.00 for twelve months (beginning October 2017), and $5,200.00 for twelve months (beginning October 2017).”

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

19. 11-31037-B-13 CHRISTOPHER/SHELLI BECK
CJY-7 James D. Pitner

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRIEND YOUNGER, PC FOR JAMES D. PITNER, DEBTORS' ATTORNEY(S)
2-3-15 [126]

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

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). 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 Compensation is denied.

FEES REQUESTED

Friend Younger, PC ("Applicant"), counsel to Chapter 13 Debtors Christopher Beck and Shelli Beck ("Clients"), makes a request for additional fees and expenses in the amount of $4,052.50. The period for which the fees are requested is for the period December 16, 2010 through January 14, 2015. Applicant has already been paid $2,000.00 directly from the Debtors and $1,500.00 through the Chapter 13 Plan. A task billing analysis and supporting evidence for the services rendered is provided (Dkt. 121, Exhibit A).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under

this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

The Applicant previously filed a nearly identical application for additional fees and expenses on September 22, 2014 (Dkt. 116), which the Honorable Thomas C. Holman denied without prejudice. That motion was denied because the Applicant did not show why the services rendered were sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bank. E.D. Cal. 1999) (J. McManus).

In the motion now before this court, the Applicant still has not addressed the standard in *Pedersen* and, at most, has only stated that there were "subsequent unanticipated Motions or additional work . . . arguably not covered by the initial $3,500.00 [which was approved via confirmation of the plan by order entered September 7, 2011 (Dkt. 54)]." Dkt. 126, p. 2, ln. 4. Thus, the Applicant fails to clearly specify which motions or additional work were atypical to justify additional compensation.

It is worth noting that the Exhibits filed on February 3, 2015 (Dkt. 131) are nearly identical to those filed on September 22, 2014 (Dkt. 121). Under Exhibit A "Description of Services," the amount of total fees due is identical but there has been a change in three dates ("09/09/2014" becomes "01/14/2015") (Dkt. 121, p. 8; Dkt. 131, p. 8). Oddly, the most recent Description of Services does not accurately reflect the past services performed on September 9, 2014, regardless of whether the Applicant decided not to charge for those services. Additionally odd is that the time spent preparing the nearly identical January 14, 2015 fee application required the same amount of time as that to prepare the earlier fee application. Given that the two fee applications are nearly identical, spending over two hours on the January 14, 2015 fee application was not a reasonable amount of time pursuant to 11 U.S.C. § 330(a)(3).

In sum, the Applicant has not addressed the *Pedersen* standard or why the services rendered were sufficiently greater than a typical Chapter 13 case to justify additional compensation.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the an attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. Additionally, the court acknowledges that no opposition has been filed by interested parties and that the Debtors have filed a supporting declaration. Nonetheless, the Applicant has not addressed the *Pedersen* standard or why the services rendered were sufficiently greater than a typical Chapter 13 case so as to justify additional compensation.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$0.00
Additional Costs and Expenses	$0.00

20. 14-32247-B-13 ROBERT/PAULINE COBBLER — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-18-15 [16]
JPJ-1 Jeffrey S. Ogilvie

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 and conditionally deny the Motion to Dismiss.

First, feasibility depends on the Debtors obtaining a loan modification with CitiMortgage, Inc. No evidence has been presented that the lender has consented to or is considering a loan modification.

Second, the Debtors have not yet provided the Chapter 13 Trustee with a Class 1 Checklist and Authorization to Release Information. Therefore, the Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

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 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.

21. 14-31449-B-13 ELIZABETH HERRERA MOTION TO CONFIRM PLAN
CAH-1 Oliver Greene 1-26-15 [30]

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.

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

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

First, the Plan will take approximately 67 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The proof of claim filed by the Internal Revenue Service shows an amount of $8,913.01. Debtor's plan filed January 26, 2015 states that the priority amount owed to the Internal Revenue Service is $767.00.

Second, the Declaration of the Debtor filed with the motion states that the Debtor has filed all applicable federal, state, and local tax returns to be filed for the four year period preceding the filing of the petition. However, the proof of claim filed by the Internal Revenue Service states that the Debtor has not filed income tax returns for the tax years 2012 and 2013. The plan does not comply with 11 U.S.C. § 1325(a)(9).

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

22. 13-30052-B-13 KEVIN BRACY
BLG-4 Pauldeep Bains

MOTION BY PAULDEEP BAINS TO WITHDRAW AS ATTORNEY
2-9-15 [87]

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

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is conditionally granted.

Pauldeep Bains ("Movant"), attorney for Debtor Kevin R. Bracy ("Debtor"), moves to withdraw as attorney because Movant can no longer effectively represent Debtor for ethical reasons (Dkt. 87).

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." *American Economy Ins. Co. v. Herrera*, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting *Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

The Movant asserts that he cannot effectively represent the Debtor in this bankruptcy case due to ethical reasons. This is cause for permitting the Movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(2). Although this is a sufficient basis to withdraw, Movant has not provided an affidavit stating the current or last known address of the client, the efforts made to notify the client of the motion to withdraw, or what steps Movant has taken to alleviate any prejudice to the client, if any, caused withdrawal.

The court will permit the Movant's withdrawal from this bankruptcy case provided, within seven (7) days of the date of this tentative ruling, Movant files an affidavit which includes the information referenced in the preceding paragraph. With the affidavit, Movant shall also file a proposed order which includes a statement that Movant shall mail the Debtor his case file within seven (7) days of the entry of such order.

23. 11-36558-B-13 EZEKIAL BROWN MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 2-4-15 [73]

Final Ruling: No appearance at the March 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.

The Debtor has presented evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

24. 14-31759-B-13 WILLIAM BARRANTES — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-3 Richard L. Sturdevant — 1-30-15 [37]

Final Ruling: No appearance at the March 11, 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 to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

25. 14-32162-B-13 WILLIAM HENSON
Bruce Charles Dwiggins

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
2-19-15 [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.

The Debtor's proposed Plan provides no treatment for U.S. Bank, N.A's ("Creditor") pre-petition arrearages in the amount of $659.22 related to an advance for taxes.

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.

26.	15-20164-B-13 JPJ-1	GEORGE NJENGE AND RACHEL EKINDESONE D. Randall Ensminger	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-18-15 [16]

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

First, co-Debtor George Njenge did not appear at the First Meeting of Creditors set for February 12, 2015 as required pursuant to 11 U.S.C. § 343.

Second, feasibility depends on the granting of a motion to value collateral for Bank of America. Pursuant to Local Bankr. R. 3015-1(j), a debtor must file, serve, and set for hearing a valuation motion and the hearing on valuation must be concluded before or in conjunction with the confirmation of the Plan. To date, Debtors have not filed, set for hearing, or serve on the respondent creditor and Chapter 13 Trustee a stand-alone motion to value the collateral.

Third, the Plan does not provide treatment for Franchise Tax Board and Internal Revenue Service's priority debt. The Plan does not comply with 11 U.S.C. § 1322(a)(2).

Fourth, the claim of Bank of America is mis-classified as a Class 1 claim. The claim is not a Class 1 claim in substance; it is not a claim that will, in accordance with 11 U.S.C. § 1322(b)(5), receive ongoing monthly contractual payments. Because the Additional Provisions specifically state that the creditor will receive "adequate protection" payments instead of ongoing monthly contractual payments, the Plan modifies the claim, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1).

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

27.	10-44665-B-13 SDB-3	CHRISTIAN ANENSON W. Scott de Bie	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 1-22-15 [52]

CONTINUED TO 3/16/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. McMANUS.

28. 08-30673-B-13 RAYMOND MORENO
14-2314
MORENO V. UNITED STATES OF AMERICA, INTERNAL REVENUE
Thru #29

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

CASE DISMISSED 3/9/15

29. 08-30673-B-13 RAYMOND MORENO
14-2314 USA-1
MORENO V. UNITED STATES OF AMERICA, INTERNAL REVENUE

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

CASE DISMISSED 3/9/15

30. 11-44474-B-13 EDMOND/CHERIL REYES — MOTION FOR ORDER CORRECTING CLERICAL ERROR
MWB-3 Mark W. Briden — 2-4-15 [51]

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

The Motion for Order Correcting Clerical Error 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 for Order Correcting Clerical Error is granted.

Upon review of the Chapter 13 Plan filed on October 13, 2011 (Dkt. 5) and the Order Confirming Chapter 13 Plan filed on February 1, 2012 (Dkt. 32), the court has identified a clerical error (Fed. R. Civ. P. 60(a) and Fed. R. Bankr. P. 9024) in the commitment period of the plan. The clerical error in the Order Confirming Chapter 13 Plan is a misstatement of the commitment period as 48 months; the correct commitment period is 36 months.

Federal Rule of Civil Procedure 60(a) and Federal Rule of Bankruptcy Procedure 9024 permit the court to *sua sponte* correct clerical errors arising from such inadvertence, oversight, or omission.

When a court acts properly in correcting a judgment under Fed. R. Civ. P. 60(a), the correction does not trigger a new time period in which to appeal. *Harman v. Harper*, 7 F.3d 1455, 1457 (9th Cir. 1993).

Based on the foregoing, the court will grant the motion and order the issuance of a corrected order to state the commitment period as being 36 months.

31.	13-21575-B-13 JKP-1	AMALIA GRIEGO Scott D. Hughes	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [62]

BANK OF AMERICA, N.A. VS.

CONTINUED TO 3/16/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. McMANUS.

32. 15-20176-B-13 LEO PALILEO
JPJ-1 Sally C. Gonzales

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-15 [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 overrule the Objection and deny the Motion to Dismiss without prejudice.

The Debtor has provided proof of his social security to the Chapter 13 Trustee by personally appearing at the Trustee's office after receiving his replacement social security card in the mail. Additionally, the Debtor has filed an Amended Statement of Financial Affairs, which includes the name of his spouse at question #16 (Dkt. 18, p. 9).

The Objection is overruled. However, the Plan will not be confirmed since the Debtor has indicated that he will file a Motion to Confirm First Amended Plan and set it for hearing. As such, the Debtor will be given further opportunity to file his amended plan.

33. 14-32389-B-13 JPJ-1 — BOWDIE/CHARITY HUTCHENS, Amy L. Spencer — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 2-18-15 [18]

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 court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 22C-1) includes an improper expense at line 4 for ordinary and necessary operating expenses of $18,889.30. In order to determine if the Plan complies with 11 U.S.C. § 1325(b)(1)(B), Debtors must also complete Form 22C-2.

Second, the claim of Perkins Family Trust is mis-classified as a Class 1 claim when it should be listed as a Class 4 claim.

Third, the terms for payment of the Debtors' attorney is unclear. At Section 2.06, the Plan does not specify a selection as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1© or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Additionally, Section 2.07 specifies a monthly payment of $0.00 for administrative expenses. The Trustee cannot pay the balance of the Debtors' attorney's fees and other administrative expenses through the Plan with a monthly payment specified as $0.00.

Fourth, Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

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 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.

34. 15-21190-B-13 STEPHANIE LEFORT MOTION TO EXTEND AUTOMATIC STAY
GTB-1 George T. Burke 2-23-15 [8]

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

The Motion to Extend the Automatic Stay is granted.

Stephanie LeFort ("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. 14-21541) was dismissed on July 14, 2014 for failure to pay filing fees and failure to file an amended plan after denial of confirmation. *See* Order, Bankr. E.D. Cal. No. 14-21541, Dkts. 41-43. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was 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)©.

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). The Debtor here states that the dismissal of the prior Chapter 13 case was due to the fact that on or about May 20, 2014, she was diagnosed with cancer and thereafter underwent major surgery and chemotherapy (Dkt. 10).

Debtor states that the instant case was filed in good faith to save her home from a tax sale that was scheduled by the County of Sacramento on February 23, 2015. Additionally, Debtor asserts that there has been substantial change in her personal and financial affairs. Debtor has now completed her chemotherapy treatment, has retired from her job at the State of California DMV, and is qualified for social security, thereby resulting in an increased income available for plan payments. Debtor proposes a 100% payout to all creditors and does so with a $1,512 cash flow cushion (Dkt. 1, Sched. J).

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

35. 15-20693-B-13 RK-1 — RANDY/DANIELLE SMITH — Richard Kwun — MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. — 2-6-15 [12]

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

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

The Motion to Value secured claim of Real Time Resolutions, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Randy A. Smith and Danielle L. Smith ("Debtors") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1046 O'Donnell Ave., Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $133,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

The first deed of trust secures a claim with a balance of approximately $264,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $52,755.00. 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.

36. 10-51597-B-13 PRICILIANO ROLON AND MARIA JIMENEZ
PD-1 Thomas O. Gillis

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-15 [130]

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

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

The Motion for Relief From the Automatic Stay is granted unless Debtors cure the default in the amount of $1,168.50 prior to the hearing on this matter.

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 152 Vine St., Maxwell, California (the "Property"). Movant has provided the Declaration of Ashley Vidos ("Vidos Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Vidos Declaration states that Debtors have failed to provide proof of flood insurance as required under the Deed of Trust, resulting in the Movant obtaining flood insurance on behalf of the Property and Debtors being in default to the Movant in the amount of $1,168.50.

Opposition has been filed by Priciliano Rolon and Maria Jimenez ("Debtors"), who state that they are collecting funds to reimburse the Movant for the purchase of the flood insurance. Debtors assert that they will have the funds by February 27, 2015 and will forward a check to the Movant's attorney. Debtors state that payment to cure the default in the amount of $1,168.50 will be received prior to the hearing on this matter.

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). Should the default not be cured prior to the hearing on this matter, the court determines that cause exists for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Although requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

There also being no request to waive the 14-day stay of enforcement under Rule 4001(a)(3), no waiver shall be granted.