UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 5, 2016 at 1:00 p.m.

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1. 13-29800-B-13 JOSE ARANDA AND FAVIOLA VALENCIA-ARANDA — CONTINUED MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 1-28-16 [163]
Thru #2

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on January 28, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Oppositions having been filed, the court will address the merits of the motion at the hearing.

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

This is a Motion to Modify Chapter 13 Plan After Confirmation filed on January 28, 2016, by Debtors Jose Aranda and Faviola Valencia-Aranda. Purported creditors Patricia George (dkts. 169, 171) and Harinder Dhillon (dkts. 170, 186) have opposed the motion and objected to confirmation of the modified plan. For the reasons explained below, the objections by these creditors will be overruled.

The objections pertain to pre-petition payments the purported creditors claim the Debtors should have made for their services as interpreters. Both creditors obtained state court judgments against the Debtors. Although not stated explicitly, both objections assert that the debts should not be discharged because they are based on fraud, theft, or breach of fiduciary duty. Nevertheless, there are no pending adversary proceedings and the claims register does not reflect timely proofs of claim filed by these creditors. At best, and if at all, these creditors are unsecured creditors. The modification proposed by the Debtors does not affect unsecured claims.

The Chapter 13 Trustee has also opposed the motion and objected to confirmation of the modified plan. The Chapter 13 Trustee's objections will be overruled as follows:

First, the order confirming the modified plan shall account for the Debtors' payments by stating as follows: "The Debtors have paid a total of $58,085.00 to the Trustee through February 3, 2016. Commencing with the payment due on February 25, 2016, monthly plan payments shall be $450.00 for the remainder of the Plan."

Second, approval of the loan modification in Item #2 satisfies the Trustee's feasibility and classification issues.

Therefore, for the foregoing reasons, the motion will be granted and the modified plan confirmed.

2.	13-29800-B-13 PGM-3	JOSE ARANDA AND FAVIOLA VALENCIA-ARANDA Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 3-7-16 [175]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Ditech Financial, LLC ("Creditor"), whose claim the proposed first modified plan provides for in Class 4, has agreed to a permanent loan modification which will reduce Debtors' mortgage payment from the current $1,593.00 a month to $1,095.49 a month (however, the court notes that the first modified plan filed January 28, 2016, lists a reduced monthly plan payment of $1,119.60 per month). The first modified plan payment in the amount of $1,095.49 at 3.50% was due on March 1, 2016. Debtors will make this payment for a total of thirty (30) years, with a lump sum due in year 31.

The motion is supported by Debtors' Declaration. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

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 is granted.

3. 14-20608-B-13 UNDRA/LADEANA SHELTON — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 2-26-16 [53]
Thru #5

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on February 25, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

Feasibility depends on the granting of the motion to incur debt at Item #5. That motion is denied without prejudice.

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

4. 14-20608-B-13 UNDRA/LADEANA SHELTON — MOTION TO APPROVE LOAN MODIFICATION
PGM-2 Peter G. Macaluso — 2-26-16 [59]

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

The court's decision is to not permit the loan modification requested.

Ocwen Loan Servicing, LLC, servicer for Deutsche Bank National Trust Company, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,535.42 a month (as stated in Class 1 of the plan filed January 23, 2014, and confirmed on April 29, 2014) to $1,487.83 a month. However, the plan filed January 23, 2014, does not list Ocwen and instead lists American Home Mortgage Services at Class 1. Debtors' modified plan filed February 26, 2016, lists Ocwen at both Class 1 and Class 4. The motion is denied without prejudice.

5. 14-20608-B-13 UNDRA/LADEANA SHELTON MOTION TO INCUR DEBT
PGM-3 Peter G. Macaluso 2-26-16 [64]

Tentative Ruling: The Motion to Use Credit 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 court's decision is to deny the motion without prejudice.

The motion seeks permission to purchase a vehicle. No retail installment agreement, loan terms, or deadline of when the Debtors anticipate to incur the debt are provided. The Debtors merely state that monthly payments will be no more than $260.00 per month and the interest will be no more than 12%.

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).

Although the Debtors have filed a response stating that they will provide the Trustee with the requested retail installment before the date of this hearing, the Debtors nonetheless have failed to provide the court with a copy of the agreement. The court does not know the details of the collateral or the financing agreement to adequately review the post-confirmation financing agreement or grant the motion. The motion is denied without prejudice.

6.	16-20109-B-13 JPJ-1	RENATO/MARYROSE PORLARIS Gary Ray Fraley	OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 2-22-16 [18]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Trustee's Objection to Debtor's [sic] Claim of 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 court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

First, the Debtors have claimed an interest in cash valued at $7.00 and a bank account with Bank of the West valued at $1,143.81 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $1,150.81. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtors may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. Thus, the Debtors have over-exempted the cash amount and bank account balance by the aggregate amount of $287.70.

Second, the Debtors have claimed an interest in an estimated 2015 federal tax refund valued at $300.00 and an estimated 2015 state tax refund valued at $100.00 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $400.00. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtors may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. Thus, the Debtors estimated 2015 tax refunds do not qualify as paid earnings pursuant to California Code of Civil Procedure § 704.070 and the exemption is therefore improper. The Debtors have over-exempted the estimated 2015 tax refunds by the aggregate amount of $400.00.

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

7. 15-26411-B-13 ROBERT/DEBRA SWEENY — MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
FF-1 Gary Ray Fraley — 3-1-16 [43]

Final Ruling: No appearance at the April 5, 2016, hearing is required.[1]

The Notice of Motion for Leave to File a Late 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Helen Edmondson ("Creditor") argues that excusable neglect justifies the court granting leave to file a late proof of claim. Creditor is the 89-year-old widow of John Edmondson, who obtained a judgment lien on September 10, 2014, through his attorney Gregory M. Finch against Joint Debtor Debra Sweeny. Mr. Edmondson died on June 2, 2015. Creditor states that she misunderstood Mr. Finch's advice that she did not have to take any action with regard to a trustee sale of Joint Debtor's real property, and that she misunderstood the Notice of Chapter 13 Bankruptcy for Debra Sweeny to be related to the foreclosure sale. Creditor states that she was unaware that a proof of claim was to be filed by a certain deadline until she contacted Joint Debtor's attorney in January 2016. Creditor thereafter contacted Mr. Finch, who filed the proof of claim on January 29, 2016, as Claim No. 6 on the Claims Register. The Declaration of Gregory M. Finch acknowledges that he did receive its own notice of the Joint Debtor's bankruptcy.

DISCUSSION

Debtors filed their Chapter 13 petition on August 12, 2015. The non-governmental bar date for filing proofs of claim was set as December 16, 2015. Creditor filed a proof of claim on January 29, 2016. Creditor now moves the court to allow that late-filed claim. For the reasons explained below, Creditor's motion will be denied with prejudice.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. A proof of claim in a Chapter 13 case is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a). See Rule 3002(c). That date here, i.e., December 16,

[1] Fraley & Fraley Bankruptcy Attorneys are counsel of record in this case. The present motion was filed by Gregory M. Finch of Signature Law Group. Mr. Finch does not appear to be counsel of record. He has neither substituted for nor associated with Fraley & Fraley. Typically, the court would strike Mr. Finch's motion as a fugitive document. However, inasmuch as the motion will be denied with prejudice, the effect is the same.

2015, is consistent with the date first set for the § 341 meeting in this case, i.e., September 17, 2015.

Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances listed in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). Creditor does not argue that any of those six circumstances apply in this case.

Instead, relying on *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), Creditor maintains that its late-filed claim should be allowed on the basis of excusable neglect. Creditor's argument lacks merit because the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit explained in *Coastal Alaska*:

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

Id. at 1432 (citation omitted); *see also SLEFCU v. Barker (In re Barker)*, 2014 WL 1273765 at *3 (9th Cir. BAP 2014).[2]

In sum, inasmuch as Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow the late-filed claim, the court lacks the ability to extend the bar date established under Rule 3002(c) and allow Creditor's late-filed claim for excusable neglect. Therefore, Creditor's motion is denied with prejudice and the claim asserted in Creditor's late-filed proof of claim filed on January 29, 2016, is disallowed in its entirety. *Barker*, 2014 WL 1273765 at *3 ("Therefore, under Rule 3002(c), a proof of claim must be disallowed if it is untimely.").

[2] *Pioneer* also states that Rule 3002(c) is excluded from the operation of the excusable neglect standard. *See* 507 U.S. at 389 n. 4.

8. 11-26415-B-13 RONNIE LE CONTINUED MOTION TO REFINANCE
PGM-1 Peter G. Macaluso 2-17-16 [37]

Tentative Ruling: The Motion to Approve Refinance of Mortgage 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).

This matter was continued from March 16, 2016. No new documents appear on the court's docket. The court's decision is to deny without prejudice the motion to refinance.

Debtor's motion and declaration state that he has an offer from LDWholesale to refinance his mortgage. However, there are no exhibits that show the terms offered by LDWholesale. Debtor only provides a Good Faith Estimate (GFE) and Settlement Statement (HUD-1) attached as Exhibits A and B as evidence that there is a refinancing offer. Therefore, the motion is denied without prejudice.

9. 16-20018-B-13 JOJIE GOOSELAW — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Peter G. Macaluso — 2-18-16 [26]
Thru #10

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, feasibility depends on the granting of a motion to value collateral for RC Willey Home Furnishings, Inc. That motion is denied without prejudice at Item #10.

Second, although the Debtor has filed amended Schedules A, B, and C, the schedules show that there is non-exempt assets of at least $155,530.50. Because the amount paid to unsecured creditors is only $0.00, the plan does not comply with 11 U.S.C. § 1325(a)(4).

The plan filed January 5, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

10. 16-20018-B-13 JOJIE GOOSELAW — MOTION TO VALUE COLLATERAL OF RC WILLEY HOME FURNISHINGS, INC.
PGM-2 Peter G. Macaluso — 2-18-16 [21]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to deny the motion to value without prejudice.

The motion filed by Debtor to value the secured claim of RC Willey Home Furnishings, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a washer/dryer set ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $400.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by RC Willey Home Furnishings, Inc. dba RC Willey Financial is the

claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The total dollar amount of the obligation represented by the financing agreement with RC Willey Home Furnishings, Inc. is $5,552.97 as indicated in Claim No. 5 and in Debtor's declaration. The Debtor asserts that the value of the Personal Property is $400.00 based on her review of want ads, newspapers, sales ads, and the Penny Saver. However, the Debtor does not provide any evidence as to the condition of the Personal Property or value a retail merchant would charge for the Personal Property. Without additional evidence, the court cannot determine the valuation of the Personal Property. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

11.	16-20118-B-13 JPJ-1	LESTHER GASTELUM AND ALMA SAQUELARES Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-24-16 [24]

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

This matter was continued from March 16, 2016. The court's decision is to sustain the objection and deny confirmation of the plan for the reasons stated below, unless the Debtor has provided the Trustee with the required documents.

First, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to income from the operation of a business.

Second, the Debtors have not provided the Trustee with documents related to their business including, but not limited to, a completed business examination checklist, business bank account statements for the 6-month period prior to the filing of the petition, profit and loss statements for November and December 2015, proof of all required insurance, and proof of required licenses and/or permits related to this business. The Debtors have not complied with 11 U.S.C. § 521 and it cannot be determined if the business is solvent and necessary for reorganization.

Third, the Debtors have not amended the Statement of Financial Affairs to include an interest in the business "Saquelares Landscape and Irrigation." Feasibility cannot be properly assessed pursuant to 11 U.S.C. §§1325(a)(4) or (6) without further information regarding the Debtors' interest in this business.

Fourth, the Debtors have not provided the Trustee with a copy of a Broker's Price Opinion (BPO) or appraisal of their residence. The plan cannot be fully or properly assessed pursuant to 11 U.S.C. § 1325(a)(4) until the Trustee has received and reviewed the requested documents pertaining to the value of the property.

Fifth, the plan filed January 21, 2016, does not comply with 11 U.S.C. § 1325(a)(4) as unsecured creditors would receive a higher distribution in a chapter 7 proceeding.

Sixth, the Debtors must complete Means Test Forms B122C-1 and C-2 in their entirety in order to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B).

The plan filed January 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

12. 12-36021-B-13 PGM-2 — ERNEST VALENTINE AND DIANE JOHNSON-VALENTINE — Peter G. Macaluso — MOTION TO MODIFY PLAN — 3-1-16 [56]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 1, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan, subject to the explanation below.

The Debtors have listed a childcare expense in the amount of $600.00 on Line 8 of amended Schedule J. The Debtors have provided a declaration to explain their obligation to their grandchildren and state they have provided further documentation to the Trustee to support an expense of $600.00. However, the Debtors cite no authority other than a "moral obligation" to justify this expenses. The court will continue this matter to provide the Debtors with a further opportunity to justify this expense. Otherwise, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

13. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-10 Ashley R. Amerio
Thru #15

MOTION TO AVOID LIEN OF GLORIA BANDY
2-24-16 [90]

Final Ruling: No appearance at the April 5, 2016, 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Gloria Bandy ("Creditor") against the Debtors' property commonly known as 8642 Duryea Drive, Sacramento, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of $28,719.10. An abstract of judgment was recorded with Sacramento County on July 13, 2010, which encumbers the Property. All other liens recorded against the Property total $471,208.18 (from Seterus 1st DOT at $354,156.00, Ocwen Loan 2nd DOT at $64,302.18, Capital One 3rd DOT at $52,750.00).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $292,309.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) 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).

14. 15-29322-B-13 JAMES/TRACEE LEWIS
ALF-8 Ashley R. Amerio

MOTION TO AVOID LIEN OF FORTIS CAPITAL IV, LLC
2-23-16 [80]

Final Ruling: No appearance at the April 5, 2016, 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Fortis Capital IV, LLC ("Creditor") against the Debtors' property commonly known as 8642 Duryea Drive, Sacramento, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of $10,699.84. An abstract of judgment was recorded with Sacramento County on November 30, 2013, which encumbers the Property. All other liens recorded against the Property total $471,208.18 (from Seterus 1st DOT at $354,156.00, Ocwen Loan 2nd DOT at $64,302.18, Capital One 3rd DOT at $52,750.00, Gloria Bandy at $28,719.10, and Portfolio Recovery at $4,170.87).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $292,309.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) 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).

15. 15-29322-B-13 ALF-9 — JAMES/TRACEE LEWIS, Ashley R. Amerio — MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC, 2-24-16 [85]

Final Ruling: No appearance at the April 5, 2016, 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against the Debtors' property commonly known as 8642 Duryea Drive, Sacramento, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of $4,170.87 as stated in the abstract of judgment (dkt. 88) and not $4,697.00 as listed in the motion. An abstract of judgment was recorded with Sacramento County on November 25, 2013, which encumbers the Property. All other liens recorded against the Property total $499,927.18 (from Seterus 1st DOT at $354,156.00, Ocwen Loan 2nd DOT at $64,302.18, Capital One 3rd DOT at $52,750.00, and Gloria Bandy at $28,719.10).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $292,309.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) 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).

16. 16-20423-B-13 NORMA HERNANDEZ
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-7-16 [21]

CASE DISMISSED 4/03/16

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

The court's decision is to overrule the objection as moot, the case having been dismissed on April 3, 2016.

17. 14-21025-B-13 GAYLEN/TERRI LUSCH MOTION TO INCUR DEBT
ULC-6 Ronald W. Holland 3-8-16 [65]

Tentative Ruling: The Motion to Authorize the Debtors to Incur Post-Petition Debt 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 court's decision is to deny the motion without prejudice.

The motion seeks permission to purchase a 2014 Hyundai Tucson or similar vehicle, the total to be financed of which is $18,988.00 based on preliminary arrangements with Folsom Lake Hyundai. The payments will be $410.00 per month at 14.9% interest rate. Debtors state that their current vehicle was severely damaged in an accident and that it cannot be repaired. The Debtors have obtained $7,715.25 in insurance proceeds from the damaged vehicle that will be used toward the purchase of a replacement vehicle.

Opposition

The Trustee objects to Debtors' request to incur post-petition debt on the ground that the Debtors are delinquent to the Trustee in the amount of $400.00, which represents approximately 1/3 of one plan payment under the terms of the modified plan filed March 10, 2016. By the time this matter is heard, an additional plan payment in the amount of $730.00 will also be due.

Discussion

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).

First, the Debtors are delinquent in plan payments to the Trustee. It does not appear that the Debtors are able to make plan payments as proposed or make payments on the new debt.

Second, the Debtors do not address the reasonableness of incurring debt to purchase a fairly new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Due to Debtors' current vehicle being damaged in a car accident, the Debtors received $7,715.24 in insurance proceeds. Rather than using the proceeds to purchase a more affordable vehicle, the Debtors seek to borrow an additional $18,988.00 to purchase a vehicle.

Third, the transaction is not in the best interest of the Debtors. The loan calls for a substantial interest charge of 14.9%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a reward for filing bankruptcy is to purchase a vehicle financed at 14.9% interest rate.

The motion is denied without prejudice.

18. 15-29825-B-13 VASUDEVA BENARD
JAA-1 Peter G. Macaluso
Thru #23

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR DEUTSCHE BANK NATIONAL TRUST COMPANY
1-29-16 [23]

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #19.

The objecting creditor Deutsche Bank National Trust Company as trustee for Indymac INDX Mortgage Loan Trust 2004-AR8, mortgage pass-through certificates series 2004-AR8 ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor asserts $55,307.37 in pre-petition arrearages but has not yet filed a proof of claim. The Creditor provides no evidence to support the basis for the claimed pre-petition arrears. The Creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the Creditor's objection is overruled.

Although the objection is overruled, the plan filed January 8, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

19. 15-29825-B-13 VASUDEVA BENARD
JPJ-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [37]

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

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, although the Debtor has filed an amended Schedule I and J (dkt. 52) updating the income and expenses with new employment, the Debtor has not filed an amended Schedule A/B to properly list the description of Debtor's real property and 2007 Yamaha V Star 1100 nor an amended Official Form 101 to list the 2014 bankruptcy.

Second, feasibility depends on the granting of motions to value collateral for Aaron's Sales and Leasing, Westlake Financial Services, and Schools First Financial Credit Union at Items #20, 21, and 22. Two of these motions are denied without prejudice (Aaron's Sales and Leasing and Schools Financial Credit Union.

The plan filed January 8, 2016, 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.

20.	15-29825-B-13 PGM-1	VASUDEVA BENARD Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF AARON'S SALES AND LEASING 2-18-16 [32]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to deny the motion to value without prejudice.

The motion filed by Debtor to value the secured claim of Aaron's, Inc. dba Aaron's Sales and Lease Ownership ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a washer/dryer set ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $1,200.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The total dollar amount of the obligation represented by the financing agreement with Aaron's, Inc. dba Aaron's Sales and Lease Ownership is $1,500.00 as stated in the motion. The Debtor asserts that the value of the Personal Property is $1,200.00 based on his review of want ads, newspapers, sales ads, and the Penny Saver. However, the Debtor does not provide any evidence as to the condition of the Personal Property or the value a retail merchant would charge for the Personal Property. Debtor's opinion regarding value is based on hearsay. Without additional evidence, the court cannot determine the valuation of the Personal Property. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

21. 15-29825-B-13 VASUDEVA BENARD
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
2-18-16 [40]

Final Ruling: No appearance at the March 29, 2016, hearing is required.

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

The court's decision is to value the secured claim of Westlake Financial Services, Inc. at $2,313.00.

The motion filed by Debtor to value the secured claim of Westlake Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Chevrolet Tahoe ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $2,313.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on November 20, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,986.57. 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 $2,313.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

22. 15-29825-B-13 VASUDEVA BENARD
PGM-3 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
2-18-16 [45]

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

The court's decision is to deny the motion to value without prejudice.

This is a Motion to Value Collateral of Schools Financial Credit Union ("Creditor") filed by Debtor Vasudeva Bernard ("Debtor"). The motion seeks to value Creditor's

collateral consisting of a second deed of trust in the approximate amount of $16,389.74 recorded against the Debtor's residence located at 3209 Alder Hill Court, Sacramento, CA ("Property"). The Debtor values the Property at $225,000.00. The Debtor also states the Property is subject to a first deed of trust recorded by Deutesche Bank National Trust Company in the approximate amount of $280,516.21 which means there is no equity in the Property and Creditor's second deed of trust is valued at $0.00.

Creditor objects to the Debtor's valuation on numerous grounds, one of which is persuasive and discussed below. In response, Debtor states that his lay opinion of value is sufficient evidence of the value of the Property. Because the court finds the Debtor lacks credibility and gives the Debtor's lay opinion of value absolutely no weight, Creditor's objection will be sustained and the Debtor's motion to value will be denied without prejudice.

The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, in this case, the court does not believe the Debtor. More specifically, the court finds that the Debtor lacks credibility and gives absolutely no weight whatsoever to the Debtor's lay opinion of the value of the Property. And that means the Debtor has failed to carry his burden of proof, both production and persuasion.

This case is the Debtor's third Chapter 13 case, at least in this district. The first case, no. 13-29470, was filed on July 17, 2013, and dismissed on March 25, 2014, for failure to make plan payments and unreasonable delay prejudicial to creditors. The second case, no. 14-24353, was filed on April 28, 2014, and was dismissed on November 4, 2014, for failure to make plan payments. This case, no. 15-29825, was filed on December 26, 2015. In each of these cases the Debtor stated either in Schedules or declarations, and in both under penalty of perjury, that the value of the Property was $225,000.00. *See* case No. 13-29470, Schedule D, Dkt. 11 ($225,000); case No. 14-24353, Schedule D, Dkt. 1 ($225,000); case No. 15-29825, Schedule A/B, Dkt. 11 ($225,000 and $250,000).[1]

Value is determined as of the date of the petition. *See Wages v. J.P. Morgan Chase (In re Wages)*, 508 B.R. 161, 164 (9th Cir. BAP 2014); *Benafel v. Onewest Bank, FSB (In re Benafel)*, 461 B.R. 581, 591 (9th Cir BAP 2011). Here, the court does not believe the Debtor that on each of the three petition dates referenced above, and over the span of 2 ½ years, the value of the Property remained unchanged at $225,000.00. In fact, such an assertion borders on the frivolous.

Because the court does not believe the Debtor, finds the Debtor lacks credibility, and gives no weight to the Debtor's purported lay opinion of the value of the Property the Debtor has not produced sufficient evidence to persuade (much less prove) the Property's value. And that means the Debtor has failed to satisfy his burden of proof.

Therefore, based on the foregoing, Creditor's objection to the Debtor's value of the Property is sustained and the Debtor's motion to value Creditor's collateral is denied without prejudice.

[1] Although the Schedules in this case list inconsistent values, the Debtor's declaration filed in support of the motion to value this creditor's collateral states a value of $225,000.00.

23.	15-29825-B-13 RTD-1	VASUDEVA BENARD Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SCHOOLS FINANCIAL CREDIT UNION 2-16-16 [26]

Tentative Ruling: The Objections by Creditor Schools Financial Credit Union to Confirmation of Debtor's Chapter 13 Plan Filed on January 8, 2016, was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot based on denial of confirmation in Item #19. The plan filed January 8, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

24.	16-20127-B-13 JPJ-1	JESUS AVILA Michael O'Dowd Hays	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 3-16-16 [34]

CASE CONVERTED 3/23/16

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

The court's decision is to overrule the objection as moot, the case having been converted to Chapter 7 on March 23, 2016.

25. 15-26933-B-13 PETE GARCIA
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
2-8-16 [49]

Tentative Ruling: This matter was scheduled for April 6, 2016, at 10:00 a.m. and was rescheduled to be heard April 5, 2016 at 1:00 p.m. The Motion to Confirm Debtors' [sic] First Amended Plan Filed on February 8, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

The plan proposes to pay unsecured creditors 100% in order to comply with 11 U.S.C. § 1325(a)(4). Based on the filed claims, the plan will take approximately 273 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

26.	16-20333-B-13 JPJ-1	ANDREW SANDERSON-SPROUL Gary Ray Fraley	AMENDED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 2-23-16 [18]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Trustee's Amended Objection to Debtor's Claim of 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 court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

First, the Debtor has claimed an interest in an estimated 2015 federal tax refund with a value of $3,500.00 as exempt under 15 U.S.C. § 1673. However, California has opted out of the federal exemptions and has elected state exemptions for its citizens pursuant to California Code of Civil Procedure § 703.130(a). Therefore, the Debtor has over-exempted the estimated federal tax refund by $3,500.00.

Second, the Debtor has claimed an interest in an estimated 2015 state tax refund valued at $500.00 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $500.81. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtor may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. Thus, the Debtor has over-exempted the estimated 2015 state tax refund by $500.00.

Third, the Debtor has claimed an interest in cash in the amount of $58.00 and bank accounts with balances of $1,201.66 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $1,259.66. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtor may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. Thus, the Debtor has over-exempted the cash amount and bank account balance by the aggregate amount of $314.91.

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

27. 16-20634-B-13 BLG-1 **Thru #29**
CARL TINNEY AND EILEEN RICKENBACH
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY DENALI KNUDSON-DACANAY, HENRIQUETTA QUISOL-SEVILLA, AND JOANNA LOPEZ
3-10-16 [27]

CASE DISMISSED 3/30/16

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

The court's decision is to overrule the objection as moot, the case having been dismissed on March 30, 2016.

28. 16-20634-B-13 BLG-2
CARL TINNEY AND EILEEN RICKENBACH
Peter L. Cianchetta
MOTION TO DISMISS CASE
3-10-16 [31]

CASE DISMISSED 3/30/16

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Dismiss Case is deemed brought pursuant to 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.

The court's decision is to deny the motion as moot, the case having been dismissed on March 30, 2016.

29. 16-20634-B-13 JPJ-1
CARL TINNEY AND EILEEN RICKENBACH
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-7-16 [24]

CASE DISMISSED 3/30/16

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

The court's decision is to overrule the objection as moot, the case having been dismissed on March 30, 2016.

30. 11-49041-B-13 JAMES FERREIRA
PGM-3 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
2-29-16 [60]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Application for Attorney Fees 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 court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Client since August 28, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $3,500.00. Dkt. 27. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $1,200.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 60.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would have to file a motion for order approving permanent loan modification nun pro tunc after Debtor's case was confirmed on July 13, 2012. The plan modification was necessary to provide for the approved loan modification. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of $1,200.00 instead of $1,890.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$1,200.00
Additional Costs and Expenses	$ 0.00

31. 10-53543-B-13 MONICA BROWN
BRT-1 Richard A. Chan

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
2-18-16 [44]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to permit the loan modification requested.

The Bank of New York Mellon ("Movant") seeks court approval to allow Debtor to enter into and finalize a loan modification with Movant. Movant has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,153.26 a month to $1,766.27 a month. Movant asserts that the loan modification will have no effect on the administration of Debtor's bankruptcy plan as this claim is currently being provided in Class 4.[1] The loan modification amends and supplements the note, secured by a first deed of trust, against Debtor's primary residence and provides the capitalization of arrears into a modified principal balance.

The motion is supported by the Declaration of Sharon Solis. The Declaration affirms Movant's desire for approval of the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

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

[1] Debtor's plan filed December 23, 2010, lists BAC Home Loans as the holder of the 1st DOT at Class 4 and not Bank of New York Mellon.

32. 15-26244-B-13 DOUGLAS GONZALES
PGM-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN
2-23-16 [69]

Thru #33

Tentative Ruling: The Motion to Confirm Debtor's Second Amended Plan Filed on February 23, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the second amended plan.

Feasibility depends on the granting of a motion to value collateral for BAC Home Loan Servicing.[1] That motion is granted at Item #33.

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

33. 15-26244-B-13 DOUGLAS GONZALES
PGM-4 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF CHRISTIANA BANK & TRUST COMPANY
3-8-16 [77]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to value the secured claim of Christiana Bank & Trust Company at $0.00.

The motion to value filed by Debtor to value the secured claim of Christiana Bank & Trust Company ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7625 Lake Hill Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

[1] The Chapter 13 Trustee's opposition states that the Debtor has filed a motion to value collateral of BAC Home Loan Servicing. However, the motion to value is actually for Christiana Bank & Trust Company.

the value of a secured claim.

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

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $358,877.43. Creditor's second deed of trust secures a claim with a balance of approximately $71,065.47. 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.

34. 15-26248-B-13 ANDREW/EMILY TWISS MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie 2-24-16 [44]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

35. 15-20353-B-13 ERIKA SCHNITZLER-LOPEZ
16-2009
SCHNITZLER-LOPEZ V. U.S.
DEPARTMENT OF EDUCATION ET AL
Thru #36

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-13-16 [1]

36. 15-20353-B-13 ERIKA SCHNITZLER-LOPEZ
16-2009 BHS-1
SCHNITZLER-LOPEZ V. U.S.
DEPARTMENT OF EDUCATION ET AL

MOTION TO INTERVENE
2-22-16 [13]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to grant the motion to intervene.

Educational Credit Management Corporation ("Movant") moves to intervene as a defendant under Fed. R. Civ. P. 24(a) and (b), as made applicable here via Fed. R. Bankr. P. 7024.

Fed. R. Civ. P. 24(a) provides: "On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

In the Ninth Circuit, a party may intervene as a matter of right under a four-part test: (1) the motion to intervene must be timely; (2) the party must assert an interest relating to the property or transaction which is the subject of the action; (3) the party must be so situated that without intervention the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the party's interest must be inadequately represented by other parties in the action. *United States v. State of Washington*, 86 F.3d 1499, 1503 (9 Cir. 1996); *see also Cedar-Sinai Medical Center v. Shalala*, 125 F.3d 765, 768 (9 Cir. 1997).

Fed. R. Civ. P. 24(b)(1) provides: "On a timely motion, the court may permit anyone to intervene who (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention requires 1) an independent ground for jurisdiction, 2) a timely motion, and 3) a common question of law and fact between the movant's claim or defense and the main action. *Washington*, 86 F.3d at 1506-07.

"In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

In determining whether a motion to intervene as of right or permissively is timely, the court must consider the stage of the proceeding at which the applicant seeks to intervene, prejudice to other parties, and the reason for and length of delay. *Washington*, 86 F.3d at 1503; see also *Bouman v. Pitchess*, 158 Fed. Appx. 937, 939 (9 Cir. 2006).

This adversary proceeding was filed on January 13, 2016. Discovery cut-off is has not yet been established. This means that there is still time for the movant to participate in discovery, assuming it is necessary. The court perceives no prejudice to the other parties in this proceeding and is persuaded that this motion is timely.

The Movant has become the owner and holder of the rights, title, and interest to plaintiff's student loans previously held by USA Funds, Inc. Plaintiff has named Navient Solutions, Inc. and Navient Solutions, Inc., on behalf of United Student Aid Funds as defendants. Navient Solutions, Inc. was the prior servicer agent on the Note, but it never held the right, title, and interest to the Note, which was instead held by USA Funds, Inc. The student loans are the subject of this adversary proceeding. The plaintiff is seeking dischargeability of the student loans.

The adjudication of the subject claims in favor of or against the defendants may impair or impede the Movant's interests in the loans, and the defendants do not represent or adequately represent the Movant's interests in the property.

The court will permit the Movant to intervene as a defendant under Rule 24(a)(2). The motion will be granted.

37. 15-28854-B-13 ROBERT/ROBYN JOHNSON — MOTION TO CONFIRM PLAN
Andrea Michaelsen — 2-5-16 [23]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Motion to Confirm First Amended Chapter 13 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 court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 19, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

38. 16-20557-B-13 DELMAR/KAREN REYNOLDS
JPJ-1 Clark D. Nicholas

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-16-16 [30]

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

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, although the Joint Debtor and attorney appeared at the originally scheduled meeting of creditors on March 10, 2016, the Debtor did not appear and the meeting was subsequently continued to April 14, 2016, for an examination of the Debtor. The Debtor must be thoroughly examined under oath.

Second, feasibility depends on the granting of a motion to value collateral of Americredit/GM financial for a Jeep Patriot. That motion was heard on March 16, 2016, and denied without prejudice.

The plan filed February 3, 2016, 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.

39. 16-20564-B-13 KATRINA NOPEL
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-7-16 [15]

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

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor has not provided proof of his social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, feasibility depends on the granting of motions to value collateral for Employment Development Department and Ocwen Loan Servicing, LLC. The Debtor has not filed set for hearing, and served on the respondent creditors and the Trustee stand-alone motions to value the collateral pursuant to Local Bankr. R. 3015-1(j).

The plan filed February 1, 2016, 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.

40. 16-20664-B-13 RICHARD/ROBERTA BLAKE — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Ashley R. Amerio — 3-7-16 [17]

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

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and therefore such income must be applied to make plan payments under 11 U.S.C. § 1325(b)(1). *See Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012). Without the expense in the amount of $380.00 for voluntary retirement contributions, the Debtors' monthly disposable income is $922.24 and the Debtors must pay no less than $55,334.40 to unsecured creditors. The plan pays only $32,488.70.

The plan filed February 5, 2016, 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.

41. 16-20567-B-13 ROSE RODRIGUEZ
BF-6 Pro Se
Thru #42

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
3-10-16 [30]

CASE DISMISSED 3/30/16

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

The court's decision is to overrule the objection as moot, the case having been dismissed on March 30, 2016.

42. 16-20567-B-13 ROSE RODRIGUEZ
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-7-16 [22]

CASE DISMISSED 3/30/16

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

The court's decision is to overrule the objection as moot, the case having been dismissed on March 30, 2016.

43. 15-24470-B-13 DONNA VANDERHORST MOTION TO SELL FREE AND CLEAR
RJ-10 Richard L. Jare OF LIENS
Thru #44 2-25-16 [113]

MATTER HEARD ON 3/16/16. ORDER GRANTING 3/20/16.

Final Ruling: No appearance at the April 5, 2016, hearing is required.

44. 15-24470-B-13 DONNA VANDERHORST MOTION TO CONFIRM PLAN
RJ-9 Richard L. Jare 2-25-16 [118]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Motion to Confirm 4th [Amended] Chapter 13 Plan was not 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). Only 40 days' notice was provided. No plan has been previously confirmed.

The court's decision is to not confirm the fourth amended plan.

45.	15-29773-B-13 PGM-3	CHARLES HUGHES AND VIRA EISON Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF CARMAX FUNDING SERVICES, LLC 3-8-16 [34]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

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

The court's decision is to value the secured claim of Carmax Funding Services, LLC at $6,700.00.

The motion filed by Debtors to value the secured claim of Carmax Funding Services, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2002 Lexus SC430 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $6,700.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 12 filed by Carmax Funding Services, LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 20, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,240.00. 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 $6,700.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

46.	16-20573-B-13 BF-6 **Thru #47**	FELICIANO RIOS Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 3-10-16 [24]

Tentative Ruling: Bank of America, N.A.'s Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 24, 2016. The confirmation hearing for the amended plan is scheduled for May 10, 2016. The earlier plan filed February 1, 2016, is not confirmed.

47.	16-20573-B-13 JPJ-1	FELICIANO RIOS Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-7-16 [21]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 24, 2016. The confirmation hearing for the amended plan is scheduled for May 10, 2016. The earlier plan filed February 1, 2016, is not confirmed.

48. 16-20581-B-13 BRODIE STEPHENS
JPJ-1 Peter G. Macaluso
Thru #49

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-9-16 [25]

Tentative Ruling: The court issues no tentative ruling.

The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

49. 16-20581-B-13 BRODIE STEPHENS
MCF-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY 305 SOUTH, LLC AND/OR MOTION TO DISMISS CASE
3-10-16 [28]

Tentative Ruling: The court issues no tentative ruling.

The Objection to Confirmation of the Chapter 13 Plan in the Alternative Motion to Dismiss was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

50. 15-25582-B-13 ASHWANI MAYER AND POOJA VERMA
PGM-4 Peter G. Macaluso

MOTION TO CONFIRM PLAN
2-19-16 [81]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Confirm Debtors' First Amended Plan Filed on February 19, 2016, 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). Oppositions having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

51. 15-26284-B-13 MORTISHIA FAIRCHILD
CCR-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-16 [26]

JULES DEGREEF VS.

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, Motion for Relief From Stay is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

The matter will be determined at the scheduled hearing.

52. 11-42388-B-13 MYRTLE KUCHINSKI
DBJ-5 Douglas B. Jacobs

CONTINUED MOTION TO MODIFY PLAN
2-3-16 [93]

WITHDRAWN BY M.P.

Final Ruling: The Debtor having filed a Notice of Withdrawal for the pending Motion to Modify Plan, the withdrawal being consistent with the opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion is denied without prejudice.

53. 16-21288-B-13 ARIEL/MARIA BLASE
RK-1 Richard Kwun

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
3-4-16 [10]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Motion to Value Secured Claim of Bank of America NA filed by Debtors Ariel and Maria Blase ("Debtors"), and the declaration filed in support of that motion, do not provide the address or any other relevant description of the collateral the Debtors ask the court to value. Both state only that Bank of America's claim is secured by the Debtors' residence. The court has no idea what that residence is, or where it is located.

The petition and Schedules list an address as the Debtors' residence. However, the court will not speculate if that address is accurate or current. It is counsel's obligation to provide the court with accurate information and evidence that support the relief requested. It is not the court's job to find either buried somewhere on the docket.

Therefore, the Debtors' motion to value will be continued to April 12, 2016, at 1:00 p.m. If, prior to the continued hearing, counsel files a declaration (1) identifying the address of the Debtor' residence, (2) confirming the residence is subject to the deed of trust referenced in the motion, and (3) confirming that the creditor identified in the motion holds that deed of trust, the court will enter a final order granting the motion and no appearance at the continued hearing will be necessary. If no declaration is timely filed, the motion will be denied without prejudice at the continued hearing.

54. 10-52191-B-13 WILLIAM/FLORENCE GAVIA — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
PGM-4 Peter G. Macaluso — 2-19-16 [55]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Objection to Notice of Mortgage Payment Change Filed On February 3, 2016, has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection.

Debtors object to the Notice of Mortgage Payment Change filed by CitiMortgage, Inc. ("Creditor"). Creditor seeks a mortgage payment increase from $1,070.59 to $1,738.19 beginning March 1, 2016. Debtors assert that the increase in mortgage payments is contrary to the December 8, 2015, order by this court granting the loan modification. Debtors further assert that the increase was made by the Creditor without stating the reason for the change.

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

The court has reviewed the Notice of Mortgage Payment Change filed February 3, 2016, the prior four (4) Notices, and Proof of Claim No. 7-2 filed by Creditor. The court finds no evidence or explanation as to how the Creditor computed its minimum payment calculation based on balance and days in billing cycle.

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

55. 11-29591-B-13 BRIAN SAECHAO CONTINUED MOTION FOR CONTEMPT
PLC-6 Peter L. Cianchetta 2-10-16 [72]

Tentative Ruling: The court issues no tentative ruling.

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

The court's decision is to deny the motion without prejudice.

Debtor Brian Kao Saechao ("Debtor") requests sanctions against Golden 1 Credit Union ("Creditor") for an alleged violation of the discharge injunction of 11 U.S.C. § 524(a). Debtor alleges that Creditor violated the discharge injunction by continuing to report a discharged debt to credit bureaus after his discharge was entered. For the reasons explained below, the motion will be denied.

Debtor filed a Chapter 13 petition on April 18, 2011. Debtor's plan was confirmed on June 9, 2011. Debtor completed payments under his confirmed plan and received a discharge on November 4, 2014. Debtor maintains that Creditor violated the discharge injunction of § 524(a) by continuing to report a discharged debt the three credit bureaus, i.e., Equifax, Experian, and TransUnion, from and after December 1, 2014.[1]

Debtor's Experian credit report, referenced in footnote 1, reflects a report by two agencies (Equifax and TransUnion) that Debtor's "closed" account with Creditor has a balance of "$4,389.00," is "past due" in the amount of "$4,265.00," and was "charged off." Debtor maintains that by continuing to report this information post-discharge Creditor has engaged in a "continuation of an action" and the "employment of process" to collect a debt discharged in his Chapter 13 case. The court disagrees.

Without evidence of overt acts, the court is not persuaded that reporting accurate information in and of itself is an act or process that violates the discharge injunction. In *Vogt v. Dynamic Recovery Servs. (In re Vogt)*, 257 B.R. 65 (Bankr. D. Colo. 2000), the debtors received a discharge, but five years later discovered that a leasing company was still reporting a discharged debt as "due and owing" on their credit report. The bankruptcy court noted that the bankruptcy did not erase the debt, and that the discharge is only an injunction against attempts to collect the debt as a personal liability of the debtors. *Id.* at 70. The court held that there was nothing wrong with the leasing company reporting the debt as due and owing because, in truth, it was and, thus, the creditor's report of this accurate information was not an act that violated the discharge injunction. *Id.; see also In re Small*, 2011 WL 1868839 at *4 (Bankr. E.D. Ky. 2011).

Here, the Debtor's discharge did not eliminate the debt he owed Creditor; rather, it eliminated only the Debtor's personal liability for the debt. And that is what the Experian report reflects. The report reflects a debt owing on a closed account with a past due balance that was charged off. In that regard, the report accurately reflects that the debt still exists but the Debtor is no longer personally liable to the Creditor for that existing debt. There is nothing inaccurate about that.

Moreover, Debtor has presented no evidence of any overt act associated or in

[1] The only evidence of any reporting submitted by the Debtor is from and after January 11, 2016. Exhibit 2 to the motion (mis-identified as Exhibit A in the motion) is an Experian credit report dated January 11, 2016. There is no evidence of any reporting from December 2014 through December 2015. Nevertheless, even if there were such evidence the court's decision would be the same.

conjunction with Creditor's accurate report of information that evidences an intent or effort by the Creditor to collect the discharged debt. For example, there is no evidence of any phone calls, letters, or other contact by the Creditor in conjunction or association with the reported information. And in light of the parties' November 2015 settlement agreement (which the Debtor failed to disclose to the court), the court finds it difficult to believe that the Debtor would understand that he remained personally liable for the discharged debt or the Creditor's report of otherwise accurate information was an act or process to collect that discharged debt from him personally.

In sum, the court is not persuaded that Creditor engaged in any act or process in violation of the discharge injunction by its post-discharge report of accurate information, without more, to any of the three credit bureaus. Therefore, based on the foregoing, Debtor's motion for sanctions for violation of the discharge injunction is denied without prejudice.

56. 12-22391-B-13 ROBERT/FINLEY KELLER MOTION FOR CONTEMPT
SJS-6 Scott J. Sagaria 3-9-16 [122]

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, the Debtors' Motion for Order to Show Cause for Contempt of the Automatic Stay and Confirmation Order is deemed brought pursuant to 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. Nonetheless, opposition was filed and the court will address the merits of the motion at the hearing.

The court will entertain argument regarding this matter at the scheduled hearing.

57. 13-34891-B-13 MICHAEL/KATHERINE HOLLIDAY
Eamonn Foster

MOTION FOR COMPENSATION FOR EAMONN FOSTER, DEBTORS' ATTORNEY
3-4-16 [80]

Final Ruling: No appearance at the April 5, 2016, hearing is required.

The Application and Declaration Re: Additional Fees and Expenses in Chapter 13 Cases 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 court's decision is to grant in part and deny in part the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, the Eamonn Foster ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $6,000.00, which was the maximum set fee amount in business cases under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 46. The Applicant was paid $3,000.00 prior to the filing of the petition and the remaining $3,000.00 has been paid by the Chapter 13 Trustee through the Debtors' plan. Applicant now seeks additional compensation in the amount of $1,500.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 82.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would have new tax liabilities, would require the filing of a modified plan, and would need to request post-petition financing for a vehicle.

The court finds that the four (4) hours of services relating to tax liabilities and the filing of a modified plan are not substantial and unanticipated. Indeed, the Guidelines state that the "no-look" fee is sufficient to fairly compensate counsel for most post-confirmation services such as reviewing the notice of filed claims and modifying the plan to conform it to the claims filed. Thus, the court will deny the request for additional compensation for these four (4) hours of services. On the other hand, the court does find that the two (2) hours of services for post-petition financing was substantial and unanticipated post-confirmation work. Therefore, the court will grant the request for additional compensation for those two (2) hours of services.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided.

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

Additional Fees	$500.00 (from 2 hrs x $250.00)
Additional Costs and Expenses	$ 0.00

58. 15-28095-B-13 PAVEL KARAMALAK
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO CONFIRM PLAN
1-6-16 [31]

Thru #60

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed on January 6, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

Although the motions to avoid judicial lien of Midland Funding, LLC and Citibank, N.A. are granted at Items #59 and #60 and, thus, do not adversely affect feasibility of the plan, the plan nonetheless cannot be confirmed because the claim of Bank of New York Mellon is misclassified as a Class 2B claim. By classifying this claim in Class 2B, it appears that the Debtor is attempting to modify the claim of Bank of New York Mellon by reducing the claim based on the value of the collateral. No evidence that the lender has consented to or is considering a loan modification has been presented.

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

59. 15-28095-B-13 PAVEL KARAMALAK
PGM-2 Peter G. Macaluso

CONTINUED MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
1-25-16 [38]

Tentative Ruling: This matter was continued from March 2, 2016, in order to allow the Debtor to amend Schedule C and permit any opposition to be filed. The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against the Debtor's property commonly known as 7537 Cripple Creek Road, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,803.96. An abstract of judgment was recorded with December 12, 2014, County on Sacramento, California, which encumbers the Property. All other liens recorded against the Property total $170,230.65 (from $165,408.79 1st DOT and $4,821.86 judicial lien of Citibank, N.A.).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $198,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $100,000.00 on amended Schedule C. Dkt. 64. The amendment to the homestead exemption in Schedule C resolves the Trustee's objection.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

60. 15-28095-B-13 PAVEL KARAMALAK
PGM-3 Peter G. Macaluso

CONTINUED MOTION TO AVOID LIEN OF CITIBANK, N.A.
1-25-16 [43]

Tentative Ruling: This matter was continued from March 2, 2016, in order to allow the Debtor to amend Schedule C and permit any opposition to be filed. The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtor's property commonly known as 7537 Cripple Creek Road, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,821.86. An abstract of judgment was recorded with July 22, 2014, County on Sacramento, California, which encumbers the Property. All other liens recorded against the Property total $165,408.79.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $198,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $100,000.00 on amended Schedule C. Dkt. 64. The amendment to the homestead exemption in Schedule C resolves the Trustee's objection.

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