UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 19, 2016 at 1:00 p.m.

1.	16-20303-B-13 JPJ-1	MICHELE REED Michael David Croddy	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-24-16 [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.

This matter was continued from March 16m 2016, to allow the Debtor to attend the continued § 341 meeting and allow the Trustee to file any supplemental objection to confirmation based upon any additional information obtained at the continued § 341 meeting.

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

First, the Debtor failed to appear in person or telephonically from a U.S. Embassy in London, England at the continued § 341 meeting held on March 17, 2016. The § 341 meeting has again been continued to April 21, 2016, for the Debtor to be examined in person by the Trustee. The Trustee must perform a thorough examination of the Debtor under oath before a plan can be confirmed.

Second, the plan does not appear to comply with 11 U.S.C. § 1325(a)(6) as the Debtor does not appear to be able to fund the proposed plan payments. According to the Debtor's attorney, the Debtor is no longer receiving rental income and will be filing an amended plan to account for the Debtor's changed circumstances. The plan cannot be confirmed if the Debtor's financial circumstances have changed and the Debtor now wishes to file and prosecute an amended plan.

The plan filed January 20, 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.

2. 16-20010-B-13 JASON SMITH MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs 3-1-16 [18]

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

The court's decision is to confirm the first amended plan provided that the order confirming state: "As of March 25, 2016, the Debtor has paid a total of $2,290.00 into the plan and commencing April 25, 2016, the plan payment shall be $1,070.00 for the remainder of the plan."

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

3.	12-39713-B-13 MAC-4	DONALD FLAVEL Marc A. Carpenter	CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 12-4-15 [68]

Tentative Ruling: The court issues no tentative ruling.

This matter was continued from January 20, 2016. The Objection to Notice of Mortgage Payment Change was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.

4. 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).

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

This matter was continued from March 16, 2016, and again from April 5, 2016, to allow the Debtor to file supporting documentation of the refinancing offer. No new documents appear on the court's docket as of April 18, 2016.

Debtor's motion and declaration state that he has an offer from LDWholesale to refinance his mortgage but the Debtor does not provide exhibits showing 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. It appears that the "terms" in the GFE are expired. The interest rate stated in the GFE is only available through December 22, 2015, and the estimate for all other settlement charges is available through January 7, 2016.

5.	12-36021-B-13 PGM-2	ERNEST VALENTINE AND DIANE JOHNSON-VALENTINE Peter G. Macaluso	CONTINUED 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 confirm the modified plan.

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 matter was continued from April 5, 2016, to provide the Debtors the opportunity to cite authority to justify the childcare expense. Nothing new has been filed as of April 18, 2016. The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

6. 12-35129-B-13 ANTHONY TEXIERA MOTION TO INCUR DEBT
LBG-2 Lucas B. Garcia 3-29-16 [154]

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase a 2009 Kenworth T660 from Snider Leasing, the total purchase price of which is $40,000.00, with monthly payments of $1,306.00 per month. The Debtor seeks to purchase a new truck to continue running his pool digging business since the trucks he currently owns have become unusable after an update to emissions testing was enacted. The Debtor asserts that his current trucks are unusable without retro-fitting that would be as costly as purchasing updated equipment without the added benefit of better durability and reliability. Additionally, Debtor asserts that it is more cost effective to purchase a truck than to rent trucks on a job-by-job basis. The Debtor has provided updated Schedules I & J as exhibits but has not filed amended schedules presumably because the Debtor will be making the payments directly to Snider Leasing. The Debtor asserts that these payments will not jeopardize his ability to maintain payments to the Chapter 13 Trustee under the terms of the confirmed plan.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

7. 15-29232-B-13 MARISTELA VILLEZAR — MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis — 2-25-16 [22]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Motion to Confirm Debtor's 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 amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors has 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 February 25, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

8. 11-46037-B-13 JAVIER CONTRERAS MOTION TO INCUR DEBT
CYB-4 Candace Y. Brooks 4-5-16 [68]

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

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase real property located at 7645 Hepburn Way, Antelope, California, the total purchase price of which is $265,000.00. The Debtor has been pre-approved for a loan in the amount of $260,200.00. The mortgage will be a 30-year fixed rate loan with interest at 4.374%. The total monthly payment will be $1,800.00, which includes principal, interest, tax, homeowners insurance, and mortgage insurance. Debtor states in her declaration that her current rent is $2,000.00 per month, which is $200.00 more than the anticipated monthly mortgage payment. Debtor asserts that her monthly contribution toward the mortgage will be no different than her current monthly contribution toward rent and that the difference will be paid by her husband.

The Debtor had previously filed a motion to incur debt for the purchase of a different real property. The court had granted that motion on January 16, 2016. Dkt. 67. However, the transaction cancelled and the Debtor was not able to purchase the real property.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

9. 16-20937-B-13 FRANK/RONNI STEVENS MOTION TO CONFIRM PLAN
SNM-1 Stephen N. Murphy 3-8-16 [17]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Oppositions 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 court overrules the objection of creditor JPMorgan Chase Bank, N.A. The creditor holds a deed of trust secured by the Debtors' residence. The creditor asserts $4,498.67 in pre-petition arrearages but has not yet filed a proof of claim. Additionally, 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.

Despite overruling the creditor's objection, the court will not confirm the first amended plan for reasons stated below.

First, the Debtors have not amended their petition to indicate that they filed another chapter 13 bankruptcy case on May 29, 2009 (case no. 09-30870). The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Second, the Debtors have not provided the Trustee with requested profit and loss statements or bank statements related to the operation of a business as requested by the Trustee at the § 341 meeting held on March 17, 2016. It cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(3)(4) and (6), or § 1325(b)(1)(B).

Third, the Debtors have not amended Schedule B to reflect the vehicles Debtors now have or the Statement of Financial Affairs to reflect details pertaining to the sale of certain vehicles. Without these amendments, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4).

Fourth, because there is a discrepancy in the amount of the secured claim of Franchise Tax Board, the plan will take approximately 225 months to complete. This exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and 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.

10.	11-43238-B-13 JPJ-1	TIMOTHY/CHERYL WHITTEMORE Lorraine W. Crozier	OBJECTION TO CLAIM OF SALLIE MAE EDUCATION TRUST, CLAIM NUMBER 10 3-3-16 [51]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 10 of Sallie Mae Education Trust and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Sallie Mae Education Trust ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,955.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was February 8, 2012. Notice of Bankruptcy Filing and Deadlines, Dkt. 9. The Creditor's Proof of Claim was filed October 25, 2012.

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(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. 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 included 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."). No showing has been made that any of those circumstances apply.

The court also notes that 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 stated 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.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

11. 16-22042-B-13 GARY BITTERS MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Scott J. Sagaria 4-5-16 [9]

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

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

This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed by Judge Sargis on October 19, 2015, after Debtor failed to make plan payments (case no. 15-21293, Dkt. 64).

The Debtor asserts that he was unable to make plan payments in his previous case due to his changed employment status. Debtor states that in the middle of his previous case, he had gained employment and thus lost his unemployment income, but thereafter was let go from his employment. The Debtor is now still unemployed, seeking employment, and currently receives unemployment income averaging $1,380.00 per month. Debtor states that his expenses are approximately $1,182.50 per month, allowing for a monthly plan payment of $195.00.

Nevertheless, the Debtor was unemployed when his prior case was dismissed and is still unemployed. Nothing has changed in between the two cases. The Debtor has failed to rebut the presumption of bad faith by clear and convincing evidence.

12. 11-28943-B-13 DEBBY NAIMAN
JPJ-3 Ronald W. Holland

MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
1-27-16 [84]

Tentative Ruling: The court issues no tentative ruling.

The Trustee's Notice of Default and Application to Dismiss 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 matter will be determined at the scheduled hearing.

13. 15-29747-B-13 CHRISTPHER/DAPHNE CANNON MOTION TO CONFIRM PLAN
MG-2 Matthew J. Gilbert 3-4-16 [29]

Tentative Ruling: The Motion to Confirm 1st Amended Chapter 13 Plan Filed on March 4, 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.

Feasibility depends on the motion to value collateral of the Internal Revenue Service for the Debtors' personal property. Although the motion and declaration filed in support of this plan state that the IRS filed a proof of claim that matches the amount of the secured claim being proposed by the Debtors, the IRS filed a proof of claim in the secured amount of $22,334.30 and the Debtors are only proposing to pay a total of $16,933.76 toward the secured claim of the IRS in Class 2A and Class 2B. Therefore, feasibility of proposed treatment of the IRS in Class 2A and Class 2B would depend on the granting of a motion to value collateral. The Debtors must file, set for hearing, and serve on the respondent creditor and the Trustee a motion to value the collateral.

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

14. 15-25155-B-13 DOUGLAS/DENISE BRITT
JPJ-2 Pauldeep Bains

OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 23
3-3-16 [63]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 23 of Bank of America NA and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Bank of America NA ("Creditor"), Proof of Claim No. 23 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $13,390.11. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 21, 2015. Notice of Bankruptcy Filing and Deadlines, Dkt. 19. The Creditor's Proof of Claim was filed October 22, 2015.

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(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. 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 included 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."). No showing has been made that any of those circumstances apply.

The court also notes that 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 stated 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.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

15. 16-20557-B-13 DELMAR/KAREN REYNOLDS
JPJ-1 Clark D. Nicholas

CONTINUED 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.

This matter was continued from April 5, 2016, to allow Debtors Delmar and Karen Reynolds to obtain a stipulation regarding the value of their Jeep Patriot. Debtors have obtained a stipulation that resolves the valuation issue and values the vehicle at $7,500.00. The Chapter 13 Trustee noted in his opposition filed March 16, 2015, that this increased and stipulated value will not cause the plan to be overextended. The court also notes that the Debtor appeared at continued § 341 meeting held on April 14, 2016 (the co-Debtor previously appeared), and the meeting was concluded on that date.

With these two matters resolved, and there being no other objection to confirmation, the court's decision is to overrule the Trustee's objection as moot, deny the Trustee's motion to dismiss, and confirm the Debtors' plan. There is no need for the Debtors to appear at the April 19, 2016, continued hearing.

16. 15-28163-B-13 JOHN LEIJA AND SYLVIA REYES
CK-3 Catherine King

MOTION TO CONFIRM PLAN
3-3-16 [43]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Motion to Confirm Chapter 13 Plan Dated March 3, 2016, 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 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 March 3, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

17. 15-24164-B-13 JPJ-1 **Thru #19**

JAKE/BRENDA ESCALANTE
Gary Ray Fraley

OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 8
2-22-16 [31]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Atlas Acquisitions, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 8 of Atlas Acquisitions, LLC and disallow the claim in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Atlas Acquisitions, LLC ("Creditor"), Claim No. 8. The claim is asserted to be unsecured in the amount of $400.00. Objector asserts that the Creditor failed to provide with the proof of claim a statement including the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A).

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim does not provide the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

18. 15-24164-B-13 JPJ-2

JAKE/BRENDA ESCALANTE
Gary Ray Fraley

OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 9
2-22-16 [35]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Atlas Acquisitions, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006).

Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 9 of Atlas Acquisitions, LLC and disallow the claim in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Atlas Acquisitions, LLC ("Creditor"), Claim No. 9. The claim is asserted to be unsecured in the amount of $620.00. Objector asserts that the Creditor failed to provide with the proof of claim a statement including the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A).

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim does not provide the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

19.	15-24164-B-13 JPJ-3	JAKE/BRENDA ESCALANTE Gary Ray Fraley	OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 10 2-22-16 [39]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Atlas Acquisitions, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 10 of Atlas Acquisitions, LLC and disallow the claim in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Atlas Acquisitions, LLC ("Creditor"), Claim No. 10. The claim is asserted to be unsecured in the amount of $570.00. Objector asserts that the Creditor failed to provide with the proof of claim a statement including the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A).

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine

the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim does not provide the date of the account holder's last transaction or the date of the last payment on the account pursuant to Fed. R. Bankr. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

20.	15-24771-B-13 JPJ-1	CARLOS MAXIMO, JR. AND ELIZABETH MAXIMO Gerald L. White	OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 5 2-23-16 [35]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV II, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 5 of Cavalry SPV II, LLC and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 5. The claim is asserted to be in the amount of $4,673.28. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about November 6, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on June 12, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

21. 11-24972-B-13 MARIA TERESA/EDUARDO ADONA
MAC-7
Marc A. Carpenter

MOTION TO MODIFY PLAN
2-29-16 [139]

Final Ruling: No appearance at the April 19, 2016,hearing is required.

The Motion Allow Debtors to Modify Existing 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 a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 29, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

22. 15-26973-B-13 STEVEN RUTHENBECK MOTION TO CONFIRM PLAN
ET-3 Matthew R. Eason 2-29-16 [69]

Tentative Ruling: Because feasibility of the plan depends on Debtor Steven Ruthenbeck obtaining funds to pay the plan in full by April 25, 2016, this matter will be continued to May 3, 2016, at 1:00 p.m. to allow the Debtor to the acquire the funds necessary to fully fund the plan. Confirmation will be denied on May 3, 2016, if at that time the plan has not been fully funded.

23.	15-29773-B-13 PGM-2	CHARLES HUGHES AND VIRA EISON Peter G. Macaluso	MOTION TO CONFIRM PLAN 3-8-16 [28]

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed March 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 and a response having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that the order confirming properly account for the plan terms by stating the following: The Plan Payments are $2,925.00 for 2 months, then $2,970.00 for 58 months beginning March 2016.

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

24.	16-20581-B-13 JPJ-1	BRODIE STEPHENS Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 3-9-16 [25]

Tentative Ruling: The court issues no tentative ruling.

This matter was continued from April 5, 2016. 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.

25. 14-32183-B-13 NEVELL WALLACE AND ANGELA PRUDHOMME-WALLACE
SDB-2 W. Scott de Bie

MOTION TO MODIFY PLAN
3-7-16 [31]

Final Ruling: No appearance at the April 19, 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 a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 7, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

26. 15-22784-B-13 JOSEPH/HEATHER ADKINS — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOSEPH CHARLES ADKINS AND HEATHER ANN ADKINS
DBJ-4 Bonnie Baker — 3-9-16 [158]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Motion to Approve Settlement 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 grant the motion.

Tri Counties Bank ("Movant") requests that the court approve a compromise and settlement of competing claims and defenses with Joseph and Heather Adkins ("Debtors"). The claims and disputes to be resolved by the proposed settlement pertain to the treatment of Movant's interest in and valuation of Debtors' residence.

Movant and Debtors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit I, Dkt. 161):

A. Tri Counties Bank, upon court approval, agrees to promptly dismiss, with prejudice, the appeal;

B. The note shall be treated as secured by a 2nd deed of trust in the amount of $3,743.77 (the difference between what the bank asserts the property is worth [$85,000] and the amount of the 1st deed of trust on the property [$81,256.23]);

C. The sum of $22,173.73 shall be treated as unsecured;

D. In the event that the Debtors complete their chapter 13 plan, then any amount left owing from the unsecured portion of the 2nd deed of trust shall be treated as discharged with no further liability and Tri Counties Bank will release any lien on the Debtors' property securing that note;

E. Should, however, the Debtors, for any reason, not complete their chapter 13 plan, then the entire amount of the note ($25,917.50) plus accrued interest, less any payments, shall be enforceable under the original terms of the note;

F. This agreement shall not affect the terms of the confirmed Chapter 13 plan;

G. Each party shall bear their own costs and fees in reaching this agreement except that the Bank shall reimburse the Debtor's attorney the amount of $1,000 for her time and costs in resolving these issues.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425

(1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant does not state what its probability of success is on appeal but does state that this factor weighs in favor of the compromise.

Difficulties in Collection

Movant states that this factor weighs in favor of the compromise because there is no evidence that the Debtors will be able to make the necessary payments under the secured note owed to the Movant should the Movant be successful on appeal.

Expense, Inconvenience and Delay of Continued Litigation

Movant states that this factor weighs in favor of the compromise. By entering into the settlement agreement, both sides are resolving their positions without undertaking the time and expense of the appeal.

Paramount Interest of Creditors

Movant states that this factor weighs in favor of the compromise. The Debtors will proceed under their confirmed plan, paying all necessary amounts to their creditors, and avoid having to restructure a plan should the Movant be successful on appeal.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

27. 14-31990-B-13 DEBRA WARD MOTION TO MODIFY PLAN
SJS-2 Scott M. Johnson 3-15-16 [31]

Final Ruling: No appearance at the April 19, 2016, hearing is required.

The Debtor's 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 a debtor to modify a plan after confirmation. The Debtors has 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 March 15, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

28. 16-22094-B-13 JEFFREY MAYHEW MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 4-5-16 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 22, 2016, after Debtor failed to make plan payments (Case No. 15-28858, Dkt. 30). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the current case was filed in order to cure pre-petition arrears owed on the primary residence, to retain his vehicle, and to satisfy tax debt. The Debtor's prior case was dismissed based on the Debtor's failure to make plan payments. In fact, the order dismissing the Debtor's prior case states that in the three months that case was pending the Debtor paid $0 into the plan.

The Debtor states in his declaration that he will be more frugal with his money (but doesn't explain how), that he has reduced expenses that are unnecessary (without explaining what those expenses are and how they were unnecessary), that he is more conscious of what he needs to spend money on (without any explanation of what he was spending money on before and what he will spend money on now), that he will be more responsible with his spending (again without any explanation), and *may* (and, thus, may not) get a part-time job. The court is not persuaded. The Debtor's conclusory and self-serving statements are not clear and convincing evidence of a change in circumstances between the Debtor's prior Chapter 13 case and this one required for an extension of the automatic stay. Simply stating that less money will be spent is not persuasive.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied and the automatic stay is not extended for all purposes and parties, unless terminated by operation of law or further order of this court.

29. 15-29496-B-13 ANTHONY/HELEN CASACLANG MOTION TO CONFIRM PLAN
SDB-1 W. Scott de Bie 3-7-16 [31]

Tentative Ruling: The Motion for Order Confirming First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition and a response have been filed.

The court's decision is to not confirm the first amended plan. The Debtors have filed a responses stating that they accept a denial of their motion and request to be allowed 75 days to confirm an amended plan. The Debtors shall have 75 days from April 19, 2016, to confirm a plan.

First, feasibility depends on resolving the claim amount of Pro Solutions. Debtors have requested an amendment of this claim from the creditor and, if an amended claim is not filed, the Debtors state they anticipate filing an objection to the claim. If this claim is not resolved, the plan will take approximately 75 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtors acknowledge that certain plan payments were made after the monthly due date and that this prevented the Chapter 13 Trustee from properly disbursing the funds. The Trustee was therefore unable to fully comply with § 2.08(b) of the plan.

Third, the Debtors may still be delinquent to the Trustee.

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