UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: May 14, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 14, 2019 at 1:00 p.m.

1.	19-21803-B-13 RWH-1	ESTEBAN VILLA AND ALICIA ROBERTS-VILLA Ronald W. Holland	MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION 4-2-19 [8]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Safe Credit Union at $22,600.00.

Debtors' motion to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2014 Ford Expedition ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $22,600.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 6-1 filed by Safe Credit Union 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 April 25, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $28,951.46. 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 $22,600.00. *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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

2. 19-21107-B-13 JPJ-2 — LARRY BELLANI, Michele M. Poteracke — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS, 4-12-19 [27]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.730 in the amount of $133,802.30 to exempt his residence. The Debtor is less than 65 years old and according to Schedule I the Debtor is unmarried, has no dependents, and is not otherwise a member of a family unit. The Debtor is not mentally or physically disabled or otherwise unable to engage in substantial gainful employment. The Debtor is entitled to an exemption on his residence of no more than $75,000.00.

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

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. 19-21508-B-13 JPJ-1 **Thru #4**
JESSICA THOENE
Robert W. Fong
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-25-19 [25]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

4. 19-21508-B-13 RAS-1
JESSICA THOENE
Robert W. Fong
OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC
4-24-19 [22]

Tentative Ruling

The objection 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). 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 deny confirmation of the plan.

Objecting creditor Ocwen Loan Servicing, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $25,550.21 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 12, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5.	18-27809-B-13 MWB-1	CHERI HOUGLAND Mark W. Briden	MOTION TO CONFIRM PLAN 3-25-19 [40]

No Ruling

6. 19-22310-B-13 BONITA BROOKS MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott D. Hughes 4-16-19 [8]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 March 4, 2019, due to delinquency in plan payments (case no. 18-21198, dkts. 26, 28). 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.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 states that she fell behind on plan payments in the prior bankruptcy due to having to expend funeral and travel costs upon the death of her mother in April 2018, and she was suffering from rheumatoid arthritis and was not able to work for approximately 6 months. Debtor contends that her circumstances have changed because there are no longer funeral expenses, she has been prescribed correct medication for her arthritis which allows her to work full-time again, and she has a new vehicle being paid outside of the plan with the plan paying 100% to unsecured creditors.

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. 18-24912-B-13 ALICE OSEGUERA — MOTION FOR RELIEF FROM AUTOMATIC STAY
KRO-1 Peter L. Cianchetta — 4-25-19 [81]

JOHN RIESCHICK VS.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion for relief from stay.

John Rieschick ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 8623 Diamond Oak Way, Elk Grove, California (the "Property"). Movant has provided the Declaration of John Rieschick to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property. Movants entered into a lease agreement with Debtor on April 26, 2017. Movant seeks to proceed with the unlawful detainer action filed in state court on July 13, 2018.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on July 13, 2018, with a Notice to Quit served on July 3, 2018. Dkt. 84, exhs. B, C.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (9th Cir. BAP Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. 19-21512-B-13 LAVANH SYHAVONG
JPJ-1 Robert W. Fong

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-24-19 [12]

Tentative Ruling

The objection and motion were 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). 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 Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Form 122C-2, Line 16, has a claimed expense of $2,861.04 that is overstated and should be approximately $1,982.56 based on Debtor's pay advices and 2018 income tax returns. Also Form 122C-2, Line 43, has a claimed expense of $200.00 for "additional deduction for 20-year old vehicle" that is improper. The Debtor is not permitted to claim this deduction. *Drummond v. Luedtke (In re Luedtke)*, 508 B.R. 408 (9th Cir. BAP 2014). When the overstated expenses are corrected, the Debtor's monthly disposable income increases from $143.64 to $1,222.12 and the Debtors must pay no less than $73,237.20 to non-priority unsecured creditors. The plan currently proposes to pay $9,775.20 to non-priority unsecured creditors.

The plan filed March 12, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9. 19-21313-B-13 VASILIOS TSIGARIS
JPJ-2 Marc A. Caraska

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-12-19 [22]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

10. 19-21614-B-13 JPJ-1 **Thru #11**
RODELINA SANTOS
Mary Ellen Terranella
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-24-19 [29]

Tentative Ruling

The objection and motion were 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). 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 served upon the Trustee a completed Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, based on Claim No. 5-1 filed by Deutsche Bank on April 2, 2019, the plan will complete in approximately 77 months, 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).

Third, the plan payment in the amount of $3,730.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, and Class 2 secured claims for the first month of the plan. The plan does not comply with Section 5.02 of the mandatory form plan.

The plan filed March 15, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11. 19-21614-B-13 RAS-1
RODELINA SANTOS
Mary Ellen Terranella
OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK TRUST COMPANY AMERICAS
4-4-19 [18]

Tentative Ruling

The objection 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). 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 not confirm the plan.

Objecting creditor Deutsche Bank Trust Company Americas holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $41,355.30 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 15, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. 13-32715-B-13 PGM-1 — ALBERT/GLENDA CARTER — Peter G. Macaluso — MOTION TO AVOID LIEN OF DAIMLER TRUST — 4-12-19 [62]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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 Daimler Trust ("Creditor") against the Debtors' property commonly known as 1125 River Rock Drive, Folsom, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $21,123.55. An abstract of judgment was recorded with Sacramento County on May 15, 2013, which encumbers the Property. All other liens recorded against the Property total $495,774.18.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $468,005.00 as of the date of the petition. Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $468,005.00 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).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. 19-21816-B-7 KATHRYN MONDS
MJ-1 Gary Ray Fraley

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
4-2-19 [11]

CASE CONVERTED: 04/09/2019

Final Ruling

The case was converted to a chapter 7 on April 9, 2019. No appearance at this hearing is necessary.

The motion is continued to May 21, 2019, at 9:30 a.m. to be heard on the chapter 7 law and motion calendar.

The court will enter a minute order.

14. 18-24424-B-13 SULLAY DIN GABISI
RDW-1 Ronald W. Holland

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
4-25-19 [68]

RICHARD W. ORSER LIVING TRUST DATED FEBRUARY 14, 1991 VS.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant in part and deny in part the motion for relief from stay.

Richard W. Orser Living Trust Dated February 14, 1991, Richard W. Orser, Trustee ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4340 Stockton Boulevard, Sacramento, California (the "Property"). Movant has provided the Declaration of Richard W. Orser to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Movant's records reflect that Debtor is delinquent to the Sacramento County Tax Collector on his property taxes for the installments due on February 28, 2019, and April 10, 2019, and two penalty fees, totaling $15,549.46. Dkt. 72, exh. 3. Movant states that it recorded a Notice of Default on April 17, 2018.

The Note and Deed of Trust provide that Movant shall be entitled to recover from the Debtor and that the real property shall secure the payments of all attorney's fees and costs incurred by Lender to collect upon the real property. Dkt. 72, exh. 2, para. 35. By virtue of the Debtor default, Movant asserts that it has necessarily incurred such fees and costs and will continue to incur such fees and costs.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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

the Property.

Attorneys' Fees Requested

Although Movant requests attorney's fees and costs and cites to a provision in the Deed of Trust for the recovery of attorney's fees and costs, Movant provides no task billing statement and is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. 19-21624-B-13 GIANNE/RUBY -ROSE APURADO
SLE-2 Steele Lanphier

MOTION TO CONFIRM PLAN
3-26-19 [17]

Thru #16

DEBTOR DISMISSED:
04/15/2019
JOINT DEBTOR DISMISSED:
04/15/2019

Final Ruling

The case was dismissed on April 15, 2019. The motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. 19-21624-B-13 GIANNE/RUBY -ROSE APURADO
SLE-3 Steele Lanphier

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
3-29-19 [25]

DEBTOR DISMISSED:
04/15/2019
JOINT DEBTOR DISMISSED:
04/15/2019

Final Ruling

The case was dismissed on April 15, 2019. The motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. 19-21127-B-13 GERALDINE DEGUZMAN
JPJ-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-12-19 [23]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

First, the Debtor has claimed an exemption under California Code of Civil Procedure § 704.730 in the amount of $848,500.00 for her real property. This exceeds the maximum amount allowed of $100,000.00.

Second, the Debtor has inappropriately claimed an interest in jewelry as exempt under California Code of Civil Procedure § 704.020. This exemption is limited to equity in furnishings, appliances, provisions, clothes, and personal effects if ordinarily and reasonably necessary to the Debtor and dependents at the principal residence. Jewelry does not meet the definition of furnishings.

Third, the Debtor has inappropriately claimed an interest in a motor vehicle as exempt under California Code of Civil Procedure § 704.020. This exemption is limited to equity in furnishings, appliances, provisions, clothes, and personal effects if ordinarily and reasonably necessary to the Debtor and dependents at the principal residence. A motor vehicle does not meet the definition of furnishings.

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

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. 18-22037-B-13 MANUEL/ANN VIERNES
GEL-1 Gabriel E. Liberman

MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE FOR MANUEL SAMONTE VIERNES AND/OR MOTION FOR CONTINUED ADMINISTRATION OF CASE
4-15-19 [25]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to substitute Joint Debtor to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Joint Debtor Ann Viernes gives notice of the death of her husband Debtor Manuel Viernes and requests the court to substitute herself in place of Manuel Viernes for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Ann Viernes for Manuel Viernes as successor-in-interest. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19. 17-26738-B-13 LAURA MARCINIAK
AB-2 August Bullock

MOTION TO MODIFY PLAN
4-8-19 [39]

Thru #20

Final Ruling

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

20. 17-26738-B-13 LAURA MARCINIAK
AB-3 August Bullock

MOTION FOR COMPENSATION FOR AUGUST BULLOCK, DEBTOR'S ATTORNEY
4-8-19 [44]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to deny the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, August Bullock ("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 $4,000.00. Dkt. 15. Applicant now seeks additional compensation in the amount of $650.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis of the services provided in the form of a declaration. Dkt. 33.

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 compensation 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).

Applicant here does not address why the work she performed was substantial and unanticipated. Instead, Applicant merely states that she "spent quite a bit of time" on various matters including determining payout to unsecured creditors, reviewing claims and communicating them with Debtor, discussing claims that were not filed with the Debtor and Trustee's counsel, discussing with Debtor about the possibility of selling her residence, and ultimately filing a motion to sell real property. Accordingly, the motion for compensation is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

21. 18-27638-B-13 TANYA NORFLES
George T. Burke

ORDER TO SHOW CAUSE
5-1-19 [53]

Final Ruling

The court has reviewed and accepts the explanation of circumstances provided in counsel's declaration of May 2, 2019, dkt. 57, filed in response to the court's order to show cause of May 1, 2019. Dkt. 54. Therefore, the order to show cause is discharged, no sanctions are ordered, and fees are not disgorged.

The court will issue a minute order.

22. 19-21541-B-13 WENDY/CHUCK STIEDE
JPJ-1 David P. Ritz

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-24-19 [21]

CONTINUED TO 5/21/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 5/16/19.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

23. 19-21542-B-13 TERESA/STEVEN GONSALVES — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 — Ronald R. Roundy — 4-25-19 [15]

Tentative Ruling

The objection and motion were 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). 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, according to Schedule E/F, Joint Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(2).

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

Third, the Debtor and Joint Debtor each have not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Both the Debtor and Joint Debtor have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the plan does not contain the wet or electronic signature of the Debtor, Joint Debtor, or their attorney. The plan does not comply with Local Bankr. R. 9004-1(c)(1)(B).

Fifth, feasibility depends on the granting of motions to value collateral for Ally and GM Financial. The Debtors have not filed, set for hearing, and served on the respondent creditors and the Trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(I).

Sixth, Section 3.08 of the Debtors' plan does not provide monthly dividends for both Ally and GM Financial. The Debtors have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, the plan does not comply wit 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtors' monthly disposable income is $842.84 and they must pay no less than $50,570.40 to unsecured non-priority creditors. The Debtors plan proposes to pay a 0% dividend to unsecured non-priority creditors.

Eighth, the Debtors have failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Therefore, counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Ninth, the Debtor have failed to file their credit counseling certificates with the court and amend their Statement of Financial Affairs to properly disclose their income received within the past 3 years as requested by the Chapter 13 Trustee. The Debtors have failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed March 20, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24.	19-21644-B-13 JPJ-1	FRANCES ENOCHS-JORGENSON Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON AND/OR MOTION TO DISMISS CASE 4-25-19 [18]

Tentative Ruling

The objection and motion were 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). 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 the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor testified at her first meeting of creditors that her last filed return was in 2017 and that she filed for an extension for her 2018 taxes. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtor has not served upon the Trustee a completed Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, the plan cannot be effectively administered because it fails to specify a minimum dividend to Class 7 unsecured nonpriority creditors at § 3.14 pursuant to 11 U.S.C. § 1325(a)(1).

Fourth, based on Claim No. 2-1 filed by U.S. Bank N.A., the plan will take approximately 602 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).

Fifth, the plan payment in the amount of $200.00 does not equal the aggregate of the Trustee's fees and monthly post-petition contract installments due on Class 1 claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Sixth, the Debtor has failed to file her credit counseling certificate and to amend Schedule I, the Statement of Financial Affairs, and petition as requested by the Trustee. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed March 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

25. 19-21747-B-13 ARACELY RIVAS
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-25-19 [32]

Tentative Ruling

The objection and motion were 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). 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, feasibility depends on the motions to value collateral of Title Max and Wells Fargo Dealer Services. Those matters were heard on May 7, 2019, and granted.

Second, the Debtor has failed to amend Schedule I and J to reflect that she no longer works for American Income Insurance Union and instead has new employment as a translator. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

For the second reasons stated above, the plan filed March 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26. 19-20949-B-13 ANNA RATH
JPJ-3 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-16-19 [45]

CASE DISMISSED: 05/03/2019

Final Ruling

The case was dismissed on May 3, 2019. The objection is dismissed as moot.

The objection is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

27. 19-20050-B-13 RONALD BROWN
JPJ-1 Julius J. Cherry

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [14]

Tentative Ruling

The objection and motion were 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). 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.

This matter was continued from April 2, 2019. Debtor's response was due April 23, 2019, and Trustee's reply was due May 7, 2019. A response was timely filed by the Debtor and a reply was timely filed by the Trustee. The Debtor also filed an additional "Notice" regarding the Trustee's reply and tax returns submitted as exhibits to the reply.

The Chapter 13 Trustee objects to confirmation on grounds that Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is $1,912.44 and the Debtor must pay no less than $114,746.40 to unsecured non-priority creditors. The plan will pay $0.00 to unsecured non-priority creditors.

Debtor filed a response on April 23, 2019, stating that he had updated the Means Test on February 25, 2019, dkt. 27, and that it shows his income as $-280.14, which should resolve the Trustee's concerns. However, the court agrees with the Trustee that the Debtor apparently made a number of frivolous and unsubstantiated deductions that border on the sanctionable simply for the purpose of depleting income to avoid paying creditors and, in turn, has not proposed a plan in good faith. None of the deductions taken on the amended Form 122C-2 are supported by competent admissible evidence and a number of the deductions are blatantly impermissible. These include the following:

(1) Line 15: $178.00 for public transportation when Debtor owns 2 vehicles and submits no evidence he uses public transportation in lieu of or in addition to his personal vehicles.
Allowed at $0.00

(2) Line 17: $1,146.77 in unsubstantiated and unexplained involuntary deductions.
Allowed at $0.00

(3) Line 20: $400.00 education expense as a condition of the Debtor's job or for physically/mentally challenged dependant when the Debtor lists no dependents, a household of 1, and no evidence of any job-relatedness.
Allowed at $0.00

(4) Line 22: $150.00 additional health care expenses which is improper because Schedule J states a health care expense of $50.00 which is less than Line 7 of $52.00.
Allowed at $0.00

(5) Line 25: $86.67 health insurance which is overstated according to Schedule I and pay advises and should be $44.00.
Allowed at $44.00

(6) Line 26: $600.00 for dependent/family support but, as noted above, the Debtor

claims no dependents and provides no evidence of he is supporting anyone other than himself.
Allowed at $0.00

(7) Lines 33b/33c: $837.21 and $560.00, respectively, for Ford F150 and Harley-Davidson motorcycle. The F150 is overstated at $159.53, the Harley is overstated at 265.41.
Allowed at $677.68 and $294.59

(8) Line 35: $961.36 owed on priority claims overstated (based on FTB and IRS POCs) $115.48.
Allowed at $845.88

(9) Line 36: $223.20 based on a 10% rather than 7.2% multiplier, so overstated by $62.50.
Allowed at $160.75

Without these impermissible deductions the Trustee calculates the Debtor's monthly disposable income at $4,565.30 which means the Debtor must pay no less than $273,918.00, or approximately 95.49%, to unsecured creditors. The Debtor's plan proposes to pay 0%.

The issue regarding feasibility of the plan depending on the granting of motions to value collateral for Ally Bank and Harley-Davidson Credit Corp. has been resolved. Both motions were granted on April 2, 2019. Nevertheless, the court sustains the Trustee's projected disposable income and bad faith objections.

The plan does not comply with 11 U.S.C. §§ 1322, 1325(a)(3), and § 1325(b)(1)(B). The objections are sustained, the motion to dismiss is conditionally denied, and the plan filed January 5, 2019, is not confirmed. The Debtor shall have 60 days to confirm a plan or this case may be dismissed on the Trustee's ex parte application.

The court has also reviewed the Debtor's Notice Regarding Bankruptcy Rule 4002 filed on May 9, 2019, in which the Debtor "requests that the trustee's reply brief be immediately stricken **or** safeguards need to be put in place to restrict access to the debtor's tax return information." Dkt. 54 (emphasis added). Given the Debtor's consent to safeguards to restrict access to his tax information as an alternative to striking the Trustee's reply brief, the court will order PACER access to dkt. 54 be restricted to the public. The request to strike the Trustee's reply brief is denied.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

28.	16-26053-B-13 JGD-6	JOHN PUGH John G. Downing	MOTION TO MODIFY PLAN 3-28-19 [93]

No Ruling

29.	19-20354-B-13 RLC-1	ERIC BENSON AND KARRI O'DONNELL Stephen M. Reynolds	MOTION TO CONFIRM PLAN 3-27-19 [46]

No Ruling

30. 18-23959-B-13 JPJ-1 — YOLANDA DORMAN, Mikalah R. Liviakis — OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 2, 3-12-19 [20]

Final Ruling

The objection 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. 2-1 of Merrick Bank and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Merrick Bank ("Creditor"), Claim No. 2-1. The claim is asserted to be in the amount of $2,145.47. 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 proof of claim, the last payment was made on or about May 7, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on June 22, 2018, 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.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

31.	19-21760-B-13 JPJ-1	ROYCE KOHLER AND DONALD HENKLE Gerald B. Glazer	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 4-25-19 [13]

Tentative Ruling

The objection 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). 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 deny confirmation of the plan.

Procedural Background

Debtors Royce Carson Kohler and Donald Edwin Henkle ("Debtors") filed the petition that commenced this Chapter 13 case on March 21, 2019. Dkt. 1. Debtors also filed a plan with their petition. Dkt. 2. The Debtors' plan classifies Wells Fargo Bank's ("WFB") secured mortgage claim as a Class 4 claim. *Id.* at § 3.10. The WFB secured mortgage claim is filed at Claim 3-1.

The Chapter 13 Trustee ("Trustee") filed an objection to confirmation of the Debtors' plan on April 25, 2019. Dkt. 13. The Trustee objects to confirmation on the basis that the Debtors failed to use the mandatory form plan required by the court's Local Rules. *Id.*, ¶ 1. The Trustee also objects to confirmation on the basis that the Debtors' improperly classify the WFB mortgage as a Class 4 claim when it should be classified as a Class 1 claim because of a prepetition default. *Id.*, ¶2. For the reasons explained below, the Trustee's objections are well-taken and are sustained.

Discussion

The United States Bankruptcy Court for the Eastern District of California has adopted a claim classification structure in Chapter 13 cases. General Order 18-03 adopts Form EDC 3-080, a standard form Chapter 13 plan, and Local Rule 3015-1(a) makes use of the Form 3-080 standard form Chapter 13 plan mandatory in Chapter 13 cases.[1]

The mandatory form Chapter 13 plan classifies long-term secured debts on which the last payment is due after the plan term and which are in default when the petition is filed as Class 1 claims. Class 1 claims are paid by the Trustee. Class 1 of the mandatory form Chapter 13 plan states as follows:

> Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence. . . .
>
> Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

EDC 3-080, § 3.07 & § 3.07(b).

The Debtors seek to classify the WFB mortgage as a Class 4 claim. Classification of the WFB mortgage as a Class 4 claim would permit the Debtors to make postpetition mortgage payments directly to their lender rather than through the Trustee. Class 4 of

[1] Local Bankruptcy Rule 3015-1(a) states as follows:
(a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan.

the mandatory form Chapter 13 plan states as follows:

> Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

EDC 3-080, § 3.10.

Presumably, the Debtors' placement of the WFB mortgage in Class 4 rather than Class 1 is based on *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). Although *Lopez* states that §§ 1326(c) and 1322 of the Bankruptcy Code permit debtors to make payments outside the plan - or directly to creditors rather than through the trustee - it also recognizes that any right to make such direct payments is not absolute and the circumstances under which direct payments may be made are within the discretion of the bankruptcy court. *Id.* at 46-47, 53. This was confirmed in *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 (9th Cir. BAP 2010), wherein the Ninth Circuit Bankruptcy Appellate Panel stated: "In this appeal we are asked to determine whether [*Lopez*] allows a debtor the absolute right to pay an unimpaired claim directly to the creditor if the plan is otherwise confirmable. We find that a debtor has no absolute right to make such payments[.]" *See also Id.* at 690. In addition to ratifying the bankruptcy court's discretion to define the circumstances in which debtors may or may not make direct payments in a confirmed plan, *Geisbrecht* also explained that the bankruptcy court may properly exercise that discretion through local rules or general orders. *Id.* at 690-91; *see also In re Steinbaugh*, 2013 WL 5883765, *2 (Bankr. D. Idaho 2013) ("[*Geisbrecht*] held the bankruptcy court has discretion to determine when direct payments may not be appropriate."). The Eastern District of California Bankruptcy Court has done precisely that.

Consistent with *Geisbrecht*, this court has previously held that the Eastern District of California Bankruptcy Court has permissibly exercised its discretion to define the circumstances under which debtors in this district may and may not make direct payments to creditors. *See e.g.*, *In re Vera*, case no. 18-23710 (Bankr. E.D. Cal. 2018), dkts. 102, 114. In short, the mandatory form Chapter 13 plan places long-term secured debts that are in default when the petition is filed in Class 1 (which are paid by the Trustee) and permits placement of long-term secured debts that are not in default when the petition is filed in Class 4 (which are paid directly by the debtor or a third-party).

That the Eastern District of California Bankruptcy Court has exercised its discretion differently than bankruptcy courts in other California districts does not mean that debtors in this district are denied *Lopez* rights. As the court also explained in Vera, in an appropriate case and under appropriate circumstances a debtor in the Eastern District of California could confirm a plan that provides for direct payments to the creditor on a debt that was in default when the petition was filed. Indeed, that "safety valve" exists in Local Bankruptcy Rule 1001-1(f) which states as follows:

> Modification of Requirements. The Court may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

As an initial matter here, the Debtors' inclusion of the WFB mortgage in Class 4 of the plan is improper and renders the plan unconfirmable. A review of the WFB mortgage proof of claim reflects that the Debtors' mortgage was in default when the petition was filed. Accordingly, under the applicable classification structure, the WFB mortgage belongs in Class 1.

The court is also not persuaded that this case presents appropriate circumstances for a modification of the claim classification under Local Rule 3015-1(a). A modification is not warranted because the court is not persuaded that the plan is feasible if the WFB mortgage is included in Class 4 and paid directly by the Debtors.

It is apparent from WFB's proof of claim that the Debtors' prepetition default includes a deficiency for principal and interest and, thus, a deficiency resulting from sporadic underpayment of the amount contractually due WFB. WFB reported $1,506.50 in prepetition arrears on its proof of claim. That amount includes $1,401.14 in "principal and interest," $29.54 in "prepetition fees," a "projected escrow shortage" of $450.13, less "funds on hand" in the amount of $374.31.

Viewed in isolation, the prepetition arrears attributable to insufficient principal and interest payments might be seen as de minimus. But viewed in a larger picture and under the totality of the circumstances, the Debtors' mortgage default is representative of the Debtors' overall inability to pay creditors a contractually required amount at the time payment is contractually due the creditor.

The court has reviewed the claims filed on the Claims Register. Every filed claim states that the Debtors stopped making payments and thereafter failed to pay for a substantial period of time. The Debtors' significant history of nonpayment weighs heavily against the feasibility of a direct pay plan.[2] In other words, whatever the extent of the Debtors' non-absolute *Lopez* rights, based on the Debtors' significant history of nonpayment, in this case, the court is not persuaded that the Debtors' plan, which proposes to modify the claim classification structure in the form Chapter 13 plan to allow direct payments on a mortgage in default when the petition was filed, is feasible as required by § 1325(a)(6).

Conclusion

Based on the foregoing, the Trustee's objection that the Debtors' plan improperly classifies the WFB mortgage claim in Class 4 is sustained. Alternatively, the Trustee's objection that the Debtors failed to use the mandatory form Chapter 13 plan is sustained. In either case, confirmation of the plan is denied.

The plan filed March 21, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

[2]The court also notes that the WFB mortgage proof of claim states that the Debtors' monthly mortgage payment is $1,681.24. The Debtors' plan proposes a payment to WFB of $1,738.14. *See* Dkt. 2. Schedule J, Line 4, states a house payment expense of $1,100.00. Schedules I/J reflect net monthly income of $130.00. Even if that remaining $130.00 of monthly net income is added to the $1,100.00 house payment stated at Line 4 of Schedule J, the Debtors appear to lack sufficient income to make the payment to WFB proposed in the plan. This also weighs against feasability.

32. 17-22962-B-13 EBI FINI
MAC-3 Marc A. Carpenter

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
4-18-19 [95]

WITHDRAWN BY M.P.

Final Ruling

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

33. 19-20665-B-13 SHARON OPINALDO
EWV-220 Eric W. Vandermey
Thru #34

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
3-24-19 [19]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owners of a 2015 Toyota Prius ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $14,685.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Debtor's valuation. The motion states that the valuation of the Vehicle is based in part on a "Kelley Blue Book Private Party Value" but this is a third party industry source and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803. Second, the valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. *See* 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors 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).

Further, Creditor is an insured depository institution. As such, absent circumstances not applicable here, it must be served in the manner required by Bankruptcy Rule 7004(h) which requires service on an officer - and only an officer - of the institution by certified mail. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

The certificate of service that corresponds with the Debtors' motion to value reflects that Creditor was not served in compliance with Bankruptcy Rule 7004(h). *See* Docket 23. Although the certificate of service reflects that Creditor was served by certified mail, service was not solely to the attention of an officer of the institution. Rather, service was to "Attn: Officer, a Managing or General Agent, or Agent for Service of Process." *Id.* Service of the motion is therefore defective.

The Debtor has not persuaded the court regarding her position for the value of the

Vehicle or properly served the motion on Creditor. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

34. 19-20665-B-13 SHARON OPINALDO — MOTION TO CONFIRM PLAN
EWV-221 Eric W. Vandermey — 3-24-19 [24]

No Ruling

35. 19-21465-B-13 DNL-1 **Thru #37**

ABEL/LETICIA ARREOLA
Harry D. Roth

OBJECTION TO CONFIRMATION OF PLAN BY MARCELINO MARQUEZ, RIGOBERTO HERNANDEZ, IGNACIO HERNANDEZ AND SALVADOR DUENAS
4-25-19 [29]

Tentative Ruling

The objection 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). 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 #36.

Objecting creditor Marcelino Marquez, Rigoberto Hernandez, Ignacio Hernandez and Salvador Duenas (collectively, "Creditor") object to confirmation of the plan. The Debtors propose to sell a Chula Vista property and deposit the net proceeds to the plan for the first $150,000.00. Creditor filed a proof of claim on March 28, 2019 (Claim No. 3-1). The Creditor states that it has perfected judgment liens (based on abstracts of judgment) and execution liens (based on notices of levy) on all of Debtor's real property, and perfected judgment lien on Debtor's personal property. Creditor states generally that it does not consent to the use of cash collateral by the Debtors to fund their plan. However, Creditor does not cite to any law or provide a declaration or exhibits to support its motion.

Nonetheless, the plan filed March 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #36. The objection is overruled but the plan is not confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

36. 19-21465-B-13 JPJ-1

ABEL/LETICIA ARREOLA
Harry D. Roth

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-25-19 [24]

Tentative Ruling

The objection 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). 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 deny confirmation of the plan.

First, the Debtor Abel Arreola failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the Debtors failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs since the Debtor testified at the first meeting of creditors that he failed to list various assets on Schedule A/B. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and Debtors have failed to fully comply with the duty imposed by 11 U.S.C. § 521(a)(1).

Third, the plan cannot be assessed for feasibility. The Debtors propose to sell a Chula Vista property and deposit the net proceeds to the plan for the first $150,000.00. Creditor Marcelino Marquez filed a proof of claim on March 28, 2019, (Claim No. 3-1) stating that the debt owed is secured by an abstract of judgment in the amount of $476,858.54. The claim is cross-collateralized between the Chula Vista property and Debtors' residence. Based on the values of the two properties on Schedule D, the abstract of judgment by Marcelino Marquez appears to attach to all of the equity in the Chula Vista and Yuba City properties, leaving nothing left to contribute to the plan on the 12th month as described y Section 7 of the plan. The Debtors have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the debt owed to Ally Bank is improperly listed in Class 4 of the plan. Claim No. 4-1 filed by Ally Bank reflects that the final payment on the loan is due November 5, 2021, which would be in month 32 of Debtors' 60-month plan. Since the claim does not mature after the completion of the plan, the Class 4 claim is improper and must be paid through the plan.

Fifth, the plan payment in the amount of $353.70 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Sixth, the Debtor has failed to provide the Trustee with certain requested documents related to his business Sol y Luna Income Tax. They include a completed business exam checklist, bank account statements for the 6-month period prior to the filing of the petition, copy of valid business license, and copy of valid business insurance. Without these documents, it cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has failed to comply with 11 U.S.C. § 521.

Seventh, the Debtor has failed to provide the Trustee with certain requested documents related to his business La Pinata Mexican Grill and Restaurant. They include, but are not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 60month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. Without these documents, it cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has failed to comply with 11 U.S.C. § 521.

Eighth, the Debtor has failed amend the Statement of Financial Affairs, Question 27, to list his interest in La Pinata Mexican Grill and Restaurant. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed March 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

37. 19-21465-B-13 VVF-1 — ABEL/LETICIA ARREOLA — Harry D. Roth — OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE CORPORATION — 4-10-19 [18]

Tentative Ruling

The objection 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).

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 deny confirmation of the plan.

American Honda Finance Corporation ("Creditor") objects to confirmation of the plan on grounds that Debtors' plan attempts to cram down on the value of a 2018 Honda Civic that was acquired on July 30, 2018, which is less than 910 prior to the petition filing date. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value.

The plan filed March 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

38.	18-24869-B-13 JPJ-2	SARAH COUFOS Mikalah R. Liviakis	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 13-1 3-13-19 [46]

Final Ruling

The objection 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. 13-1 of LVNV Funding, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 13-1. The claim is asserted to be in the amount of $651.22. 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 proof of claim, the last payment was made on or about July 26, 2004, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 1, 2018, 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.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

39.	18-25574-B-13 MET-2	KAY MILLER Mary Ellen Terranella	MOTION TO MODIFY PLAN 3-31-19 [32]

No Ruling

40. 18-23677-B-13 JPJ-2 — MICHAEL MCELREATH, Richard L. Sturdevant — OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 4-1, 3-12-19 [65]

Final Ruling

The objection 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. 4-1 of Merrick Bank and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of Merrick Bank ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of $1,277.02. 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 proof of claim, the last payment was received on or about June 13, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on June 12, 2018, 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.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

41. 18-27681-B-13 NICHOLE FAULKENDER
SLH-1 Seth L. Hanson

OBJECTION TO CLAIM OF CASHNET USA, CLAIM NUMBER 3
3-22-19 [19]

Tentative Ruling

The objection 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 overrule the objection to Claim No. 3-1 of CNU of California, LLC, d/b/a CashNetUSA.

Debtor Nichole Faulkender ("Debtor") is the borrower under a California Consumer Installment Loan Agreement and Promissory Note dated on or about August 30, 2017. *See* Claim No. 3-1. CNU of California, LLC, d/b/a CashNetUSA ("CashNet") is the lender.

Debtor objects to CashNet's claim on the grounds that the $169.00% interest rate asserted by CashNet is in excess of the amount permitted by the California Constitution and is therefore usurious.[1] CashNet's proof of claim states that the amount owed is $6,107.82. Of that amount, $3,273.82 represents the outstanding principal and $2,714.01 represents the interest.

The court notes that the Debtor's objection is not opposed. However, the absence of an opposition does not necessarily mean the objection will automatically be sustained. *See Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Accordingly, for the reasons explained below, the Debtor's objection is overruled and Cashnet's claim is allowed as filed.

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (BAP 9th Cir. 2006). "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation and internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (1st Cir. BAP 2009)). The Debtor has not produced substantial evidence that CashNet's interest is unconstitutional under the California Constitution.

As of March 11, 2019, CashNet's website states as follows:

> CA residents: CNU of California, LLC d/b/a CashNetUSA is licensed by the Department of Business Oversight pursuant to the California Deferred Deposit Transaction Law. *Installment loans made pursuant to a California Finance Lenders Law license.* Minimum installment loan amount offered is $2,600.

https://www.cashnetusa.com/rates-and-terms.html (emphasis added).

---

[1] The California Constitution, Article XV Section 1, § 1 limits interest " . . . [f]or any loan or forbearance of any money, goods, or things in action, if the money, goods, or things in action are for use primarily for personal, family, or household purposes, at a rate not exceeding 10 percent per annum . . . ."

Because CashNet holds a Finance Lender's license and makes installment loans pursuant to that license, it is exempt from the California Constitution's usury provision. http://www.dbo.ca.gov/licensees/finance_lenders/about.asp ("A finance lenders license provides the licensee with an exemption from the usury provision of the California Constitution."); *see also* Golfarb & McCurnin, Usury and the California Finance Law, California Business Law Practitioner, Vol. 33, No. 1 at 7 (Winter 201) ("The California Financing Law provides a classwide exemption from usury for licensed finance lenders.").

In short, the court is not persuaded that the Debtor has met her burden of overcoming the prima facie validity of CashNet's proof of claim. Basic information generally available to the public reflects that CashNet's loan is not subject to the usury provision of the California Constitution. The Debtor's objection is therefore overruled.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

42. 19-21681-B-13 MICHELLE SWIFT
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-25-19 [16]

Tentative Ruling

The objection and motion were 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). 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 Debtor has failed to amend her Schedules I, J, and petition as requested by the Trustee to reflect that she has new employment in the state of Texas and has moved there to work. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed March 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

43.	19-20483-B-13 EWV-215	FRANCIS ESQUIVEL Eric W. Vandermey	MOTION TO CONFIRM PLAN 3-24-19 [21]

No Ruling

44.	18-26787-B-13 JPJ-1	HUMBERTO VIEYRA Thomas O. Gillis	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 5-1 3-12-19 [28]

Final Ruling

The objection 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. 5-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jan Johnson ("Objector") requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 5-1. The claim is asserted to be in the amount of $3,747.48. 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 proof of claim, the last payment was received on or about February 16, 2005, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 29, 2018, 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.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

45. 14-30588-B-13 JON/LORRI FEENSTRA
MMM-2 Mohammad M. Mokarram

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
4-11-19 [37]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of U.S. Bank, N.A. at $0.00.

Debtors' motion to value the secured claim of U.S. Bank, N.A. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 8053 Haldeman Court, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $320,000.00 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).

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

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

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

11 U.S.C. § 506(a) (emphasis added). For the court to determine 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 $349,711.44.

Creditor's second deed of trust secures a claim with a balance of approximately $63,801.75. 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 (9th Cir. BAP 1997).

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

46.	18-24489-B-13 BLF-3	MATTHEW/ARIANA VICKERS W. Steven Shumway	MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY 4-16-19 [169]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Fees and Costs Requested

Loris L Bakken ("Applicant"), the attorney to Chapter 7 Trustee Kimberly Husted, makes a first and final request for the allowance of $6,210.00 in fees and $210.40 in expenses. The period for which the fees are requested is for February 28, 2019, through and including May 14, 2019. Applicant provided legal advice and rendered legal services to the Chapter 7 Trustee regarding general case administration and strategies on how to handle property of the estate and assisted the Chapter 7 Trustee in reviewing and responding to Debtors' motion to reconsider the court's order converting the case to a Chapter 7, employment of a realtor and investigation regarding sale of real property, the sale to Debtors the estate's nonexempt equity in property of the estate, and opposition to motion for relief from the automatic stay.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 173.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

> demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtors and bankruptcy estate and reasonable.

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

Fees	$6,210.00
Costs and Expenses	$ 210.40

The motion is ORDERED GRANTED for fees of $6,210.00 and costs and expenses of $210.40.

The court will enter a minute order.

47. 19-20293-B-13 ROLINA BROWN
PGM-3 Peter G. Macaluso
Thru #48

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
4-16-19 [50]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of OneMain Financial at $3,500.00.

Debtor's motion to value the secured claim of OneMain Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Acura MDX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by OneMain 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 September 22, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,010.59. 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 $3,500.00. *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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

48. 19-20293-B-13 ROLINA BROWN
PGM-4 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
4-16-19 [55]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Debtor's motion to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3613 Plymouth Drive, North Highlands, California ("Real Property") and a 2009 Acura MDX, household goods and effects, appliances, TV, stereo, computers, cell phones, clothing, and costume jewelry (collectively "Personal Property"). Debtor seeks to value the Real Property at a fair market value of $275,000.00 and the Personal Property at a fair market value of $11,300.00 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).

However, the court finds issue with the Debtor's valuation of Personal Property. The declaration states that the valuation of Personal Property is based in part on "a review of want ads, newspapers, sales ads and Craigslist." Problematic is these are third party industry sources and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803.

In the Chapter 13 context, the replacement value of personal property used by debtors 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 Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

49. 19-22396-B-13 RUMMY SANDHU MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 4-28-19 [12]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 14, 2019, due to Debtor's failure to confirm an amended plan within 60 days of the date of entry of the order denying confirmation of the Debtor's plan (case no. 17-20155, dkt. 158). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 does not explain how her circumstances have changed from the prior case such that the present bankruptcy will succeed. Debtor's past bankruptcy was dismissed due to failure to confirm a modified plan, not due to delinquency in plan payments. Debtor's declaration states that in the prior bankruptcy she was diagnosed with breast cancer and therefore fell behind on bills. This does not explain why Debtor failed to file and confirm a modified plan within 60 days of the date of entry of the order denying confirmation of the Debtor's plan.

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

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

50. 18-25099-B-13 MMM-1 — ROY/MEY COLE, Mohammad M. Mokarram — OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 1, 3-23-19 [19]

Final Ruling

The objection 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. 1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Roy Cole and Mey Cole ("Objectors") request that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 1. The claim is asserted to be in the amount of $6,542.40. Objectors assert 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 proof of claim, the last payment was received on or about March 19, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 14, 2018, 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.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

51.	19-21299-B-13 JPJ-1	EDWIN CARDE AND MAGDALENA SANCHEZ Mohammad M. Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 4-24-19 [35]

Tentative Ruling

The objection and motion were 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). 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 Debtors did not appear at the meeting of creditors set for April 18, 2019, or the continued meeting of creditors set for May 2, 2019, as required pursuant to 11 U.S.C. § 343.

Second, feasibility of the plan depends on the Debtor being able to continue business operations. However, a motion for relief from automatic stay to evict Debtor Edwin Carde from the leased business premises was granted on April 9, 2019. The status of Debtor's business cannot be determined. The Debtor has failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has failed to provide the Trustee with copies of his business license(s), business insurance(s), or any permits with regard to his two businesses Sacwork and Carde and Associates. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has failed to comply with 11 U.S.C. § 521.

Fourth, the Debtors failed to list the transfer of real property that occurred on May 10, 2017, which is within 2 years of the filing of the Debtors' petition, on their Statement of Financial Affairs, Question 18. The Debtors have not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed March 12, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

52.	19-21114-B-13 TGM-1	LYNDA STOVALL Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON 3-25-19 [20]

No Ruling

53. 19-20957-B-13 BRIAN HAMILTON
JPJ-2 Pro Se

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
4-12-19 [13]

Tentative Ruling

This matter was continued from May 7, 2019, to allow Debtor the opportunity to appear at a continued meeting of creditors. The objection 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). 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 deny confirmation of the plan.

First, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the plan is incomplete. The plan does not specify a minimum dividend to nonpriority unsecured creditors or the total amount of nonpriority unsecured creditors in Section 3.14. The plan fails to specify when property revests in the Debtor in Section 6.01. The plan also fails to provide treatment for the secured claim filed by the Franchise Tax Board. Finally, the plan fails to provide treatment for the secured claim filed by Shasta County Tax Collector.

Third, the Debtor failed to sign the Declaration About an Individual Debtor's Schedules. The Debtor has failed to comply with Fed. R. Bankr. P. 9011 and Local Bankr. R. 9004-1(c).

The plan filed February 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

54.	19-21282-B-13 JPJ-1	KATHLEEN RAPISURA-PARDO Peter L. Cianchetta	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 4-10-19 [30]

Tentative Ruling

This matter was continued from May 7, 2019, to allow Debtor the opportunity to file an amended petition that corrects the date Debtor's prior chapter 7 bankruptcy was filed. The objection 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). 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 and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor failed to amend Schedule J to list the correct monthly net income on Line 23a, failed to file a spousal waiver of right to claim exemptions, failed to amend her petition to list the correct year her prior cases filed, and that feasibility depends on the granting of motions to value collateral for Acceptance Now, Farmers Ins Group FCU, and Wells Fargo Dealer Services.

The Debtor has filed an amended Schedule J, the spousal waiver of right to claim exemptions, and an amended petition to list the correct year her prior case filed. Additionally, the motions to value collateral for Acceptance Now, Farmers Ins Group FCU, and Wells Fargo Dealer Services are granted.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed March 1, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.