UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 23, 2019 at 1:00 p.m.

1.	17-25500-B-13 MET-1	CANDIE SIMMONS Mary Ellen Terranella	MOTION TO MODIFY PLAN 5-30-19 [45]

No Ruling

2.	18-23901-B-13 PGM-3	DAN/MEGHAN MILLER Peter G. Macaluso	CONTINUED MOTION TO MODIFY PLAN 4-1-19 [51]

No Ruling

3. 18-26702-B-13 BLANCA MALDONADO
JPJ-1 Mohammad M. Mokarram
Thru #5

OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK C/O QUANTUM3 GROUP, LLC, CLAIM NUMBER 23
6-7-19 [22]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 23 of Department Stores National Bank c/o Quantum3 Group, LLC and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Department Stores National Bank c/o Quantum3 Group, LLC ("Creditor"), Proof of Claim No. 23 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,121.17. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 3, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed January 4, 2019.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

4.	18-26702-B-13 JPJ-2	BLANCA MALDONADO Mohammad M. Mokarram	OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 24 6-7-19 [18]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 24 of Citibank N.A. and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Citibank N.A. ("Creditor"), Proof of Claim No. 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $586.51. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 3, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed January 4, 2019.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the

> conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

5.	18-26702-B-13 JPJ-3	BLANCA MALDONADO Mohammad M. Mokarram	OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 22 6-7-19 [26]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 22 of Citibank N.A. and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Citibank N.A. ("Creditor"), Proof of Claim No. 22 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $352.96. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 3, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed January 4, 2019.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances

included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

6.	18-27902-B-13 BLG-2	PAUL FISHER Chad M. Johnson	MOTION TO MODIFY PLAN 6-17-19 [39]

No Ruling

7. 18-26605-B-13 DEBRA THOMPSON
TAG-3 Ted A. Greene
Thru #8
DEBTOR DISMISSED: 05/23/2019

MOTION TO VACATE DISMISSAL OF CASE
6-20-19 [61]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Based upon a review of all relevant matters, the court has determined that oral argument will not assist in the resolution of the motion to reconsider. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). This decision is therefore issued as a Final Ruling.

The court's decision is to deny the motion without prejudice to the filing of a new Chapter 13 case.

Discussion

The order dismissing this Chapter 13 case was entered on May 23, 2019. Dkt. 53. Debtor Debra Thompson ("Debtor") moved to vacate the dismissal on June 20, 2019. Dkt. 61.

Debtor moves to vacate the dismissal order under Federal Rules Civil Procedure 60(b)(1) and (b)(6) applicable by Federal Rule of Bankruptcy Procedure 9024. Debtor states that she fell behind on plan payments because in early April 2019, shortly after her plan was confirmed, she was served with a 30-day notice to terminate since the landlord had sold the property where she then resided. Debtor states that she had to pay the last month's rent on her residence and needed money for a deposit on a new apartment. Debtor also needed to pay for labor, a moving truck, and cleaning items in order to move. These apparently were sudden and unanticipated costs that the Debtor believes justify relief from the dismissal order.

Rule 60(b)(1)

Rule 60(b)(1) permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect under Rule 60(b)(1) is governed by the *Pioneer-Briones* factors which are: (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). Debtor addresses only the third factor. The court will address all.

The first factor weighs against granting relief. When this case was dismissed the automatic stay of § 362(a) terminated for all purposes as to all creditors. Once terminated the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming that vacating the dismissal order could revive the automatic stay, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so would result in confusion and undue prejudice to creditors who may not necessarily comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay.

The second factor weighs against granting relief. The Debtor waited nearly one month after the case was dismissed before moving to vacate the dismissal order. The Debtor then set the hearing on the motion to vacate for the following month despite the availability of a shorter hearing notice procedure. *See* Local Bankr. R. 9104-1(f)(2) & (3). The Debtor has provided no explanation for the delay. The need to confirm a modified plan in order to account for the two months of nonpayment while this case was

dismissed would further delay the administration of this case at the very least another month, and that assumes the Debtor is able to propose a confirmable plan.

The third factor weighs against granting relief. Although the Debtor experienced unanticipated expenses she failed to avail herself of the opportunity to adjust her plan payments through a modified plan. *See* 11 U.S.C. § 1129(a)(1); *see also* Dkt. 47 (notice of default and opportunity to file modified plan). Dismissal - and particularly the ability to avoid it - were therefore within the Debtor's control.

The fourth factor weighs in favor of granting relief. The court perceives no bad faith by the Debtor.

On balance, the *Pioneer-Briones* factors weigh against relief from the dismissal order for excusable neglect. Relief under Rule 60(b)(1) will therefore be denied.

Rule 60(b)(6)

The Debtor's request for relief under Rule 60(b)(6) will also be denied. Rule 60(b)(6) permits the court to grant relief for "any other reason that justifies relief." *See* Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. Relief under Rule 60(b)(6) is limited to errors or actions beyond the party's control. *Latshaw v. Trainor Worthman & Co. Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006). For the reason explained above in relation to the third excusable neglect factor, this standard is not met. Relief under Rule 60(b)(6) is therefore not warranted.

Conclusion

For the foregoing reasons, the Debtor's motion to reconsider and vacate the order dismissing this Chapter 13 case will be denied without prejudice to the re-filing of new Chapter 13 case.

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

The court will enter a civil minute order.

8. 18-26605-B-13 DEBRA THOMPSON — MOTION TO MODIFY PLAN
TAG-4 Ted A. Greene — 6-20-19 [65]
DEBTOR DISMISSED: 05/23/2019

Final Ruling

The motion was not 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). Only 33 days' notice was provided.

The court's decision is to deny the requested modification of the plan.

The court will enter a minute order.

9. 18-25209-B-13 ROMANA HERRERA MOTION TO INCUR DEBT
TAG-3 Ted A. Greene 7-9-19 [38]

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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Midland Mortgage ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment from the current $1,252.53 a month to $1,214.00 a month. The modification is for three trial payments.

The motion is supported by the Declaration of Romana Herrera. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

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

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

The court will enter a minute order.

10. 19-21010-B-13 CLARENCE COOK
ETL-2 John G. Downing
Thru #13

OBJECTION TO CONFIRMATION OF PLAN BY TRINITY FINANCIAL SERVICES, LLC
7-9-19 [79]

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 Trinity Financial Services, 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 $108,308.90 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) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 11, 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.

11. 19-21010-B-13 CLARENCE COOK
JGD-2 John G. Downing

MOTION TO CONFIRM PLAN
6-11-19 [57]

No Ruling

See Item #10.

12. 19-21010-B-13 CLARENCE COOK
JGD-4 John G. Downing

OBJECTION TO CLAIM OF U.S. BANK, N.A., CLAIM NUMBER 5
6-21-19 [74]

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 court has reviewed the objection, and all related declarations and exhibits. The court takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to overrule the objection to Claim No. 5 of U.S. Bank, N.A.

Discussion

Debtor Clarence Cook ("Debtor") objects to U.S. Bank N.A.'s ("Creditor") proof of claim, Claim No. 5, to the extent it includes an arrearage claim of $4,589.93. Dkt. 74. Debtor states there is no deficiency because he has consistently been paying the full amount referenced in his monthly mortgage statements issued from Select Portfolio Servicing, Inc. However, Debtor does not provide any probative evidence that the $4,589.93 arrearage stated in Creditor's proof of claim is inaccurate or not owed.

A claim is deemed allowed unless an objection is filed. 11 U.S.C. § 502(a). Even when an objection is filed, the claim shall be allowed, except to the extent that it is disallowed on one of the grounds in § 502(b). *See* 11 U.S.C. § 502(b). Section 502(b) provides the sole grounds on which a claim may be disallowed. *Heath v. American Express Travel Related Services Company, Inc. (In re Heath)*, 331 B.R. 424, 435 (9th Cir. BAP 2005).

Creditor's proof of claim was timely filed. The proof of claim includes proper documents and attachments. As filed, the proof of claim is properly-filed. *See* Fed. R. Bankr. P. 3001(c)(1), (c)(2). It is therefore presumptively valid as to the claim and the amount. *See* Fed. R. Bankr. P. 3001(f).

As the objecting party, the Debtor has the burden of presenting a substantial factual basis to overcome the prima facie validity of Creditor's proof of claim and the evidence must be of probative force equal to that of Creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). The Debtor has not met that burden.

Debtor includes as Exhibit 3, dkt. 77, a mortgage statement that shows $1,498.94 under Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearages). Debtor does not explicitly dispute this amount but merely states that he "does not owe the purported arrearage of $4,589.93 because [he has] consistently been paying the full amounts referenced in their [sic] monthly mortgage statements issued by SPS." Dkt. 74 at 1:24-26 (emphasis added). The extent of the Debtor's evidence is essentially a statement by the Debtor that he does not owe what Creditor's proof of claim states is owed or that the proof of claim is wrong. In either case, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a). Accordingly, Debtor's objection to Creditor's proof of claim, Claim No. 5, is overruled.

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

The court will enter a minute order.

13.	19-21010-B-13 JGD-5	CLARENCE COOK John G. Downing	OBJECTION TO CLAIM OF TRINITY FINANCIAL SERVICES, LLC, CLAIM NUMBER 6 6-21-19 [68]

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 court has reviewed the objection, and all related declarations and exhibits. The court takes judicial notice of the

docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to overrule the objection to Claim No. 6 of Trinity Financial Services, LLC.

Discussion

Debtor Clarence Cook ("Debtor") objects to the proof of claim, Claim No. 6, filed by Trinity Financial Services, LLC ("Creditor"). The Debtor asserts that Creditor has no interest in his real property located at 227-229 North 6th Street, San Jose, California ("Property") because Creditor is outside the chain of title. Dkt. 68, ¶ 1("Debtor objects . . . [t]o the Claim in its entirety on grounds that Trinity cannot establish a chain of title[.]"). The Debtor also asserts that Creditor's enforcement of its rights under the deed of trust that Creditor asserts encumbers the Property is prejudicial. Dkt. 70 at ¶¶ 12-14.

The Debtor's objection is more appropriately characterized as a dispute over the validity, extent, or priority of Creditor's lien on the Property. *See U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) ("The moving party's label for its motion is not controlling. Rather, the court will construe it, however styled, to be the type proper for relief requested."). As such, that dispute must be resolved in an adversary proceeding rather than a contested matter. *See* Fed. R. Bankr. P. 7001(2). Accordingly, Debtor's objection to Creditor's proof of claim, Claim No. 6, is overruled without prejudice to the filing of an appropriate adversary proceeding.

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

The court will enter a minute order.

14. 18-26913-B-13 ROBERT SIMMONS MOTION TO MODIFY PLAN
MOH-1 Michael O'Dowd Hays 6-3-19 [38]

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)(2) 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.

15. 16-20118-B-13 AP-1 — LESTHER GASTELUM AND ALMA SAQUELARES — Peter G. Macaluso — MOTION FOR RELIEF FROM AUTOMATIC STAY — 6-13-19 [131]

WELLS FARGO BANK, N.A. VS.

WITHDRAWN BY M.P.

Final Ruling

Wells Fargo Bank, N.A. having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(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.

16. 19-23222-B-13 DAVID CARTER
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-27-19 [13]

Final 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). A written reply has been filed to the objection.

The court's decision is to continue the matter to August 20, 2019, at 1:00 p.m.

Chapter 13 Trustee Jan Johnson ("Trustee") objects to approval of the Debtor's attorney's fees in the amount of $4,000.00 in connection with plan confirmation according to 11 U.S.C. § 329 and 330, Local Bankr. R. 2016-1(c), and Fed. R. Bankr. P. 2016. The Trustee states that it is unclear who the actual attorney of record is and whether the attorney is engaging in a scheme that involves an impermissible fee sharing and abuse of the bankruptcy process.

Attorney Mark Shmorgon has filed a response denying the allegations raised by the Trustee and requesting a four-week continuance to fully brief the issues raised by the Trustee.

The matter is continued to August 20, 2019, at 1:00 p.m. Mr. Shmorgan may file a response by July 30, 2019. The Trustee may file a reply by August 6, 2019.

17. 19-22526-B-13 KENNETH/ANN VALLIER — OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 1
MJD-1 Matthew J. DeCaminada — 5-17-19 [18]

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 Merrick Bank and the claim is disallowed in its entirety.

Kenneth Vallier and Ann Vallier ("Objectors") request that the court disallow the claim of Merrick Bank ("Creditor"), Claim No. 1. The claim is asserted to be in the amount of $729.51. 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 Objectors' exhibits, the last payment was received on or about November 10, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on April 23, 2019, 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.

The court will enter a minute order.

18.	19-20427-B-13 MRL-1	ALAIN/DANIELLE GUSELLA Mikalah R. Liviakis	MOTION TO CONFIRM PLAN 5-26-19 [31]

No Ruling

19. 18-25628-B-13 THOMAS JOPS — OBJECTION TO CLAIM OF ERIK
JPJ-1 Mikalah R. Liviakis — LARSON, CLAIM NUMBER 21
6-7-19 [22]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 21 of Erik Larson and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Erik Larson ("Creditor"), Proof of Claim No. 21 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $1,500.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was November 14, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed May 14, 2019.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding

is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

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

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

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

The court will enter a minute order.

20. 19-22932-B-13 MYRNA JACKSON — MOTION TO CONFIRM PLAN
AB-1 August Bullock — 6-18-19 [18]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 will issue its ruling from the parties' pleadings.

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

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

21. 19-23532-B-13 ERIC/KERRI OLSON
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-28-19 [17]

WITHDRAWN BY M.P.

Final Ruling

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

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

The court will enter a minute order.

22. 17-26434-B-13 TRINA ENOS MOTION TO MODIFY PLAN
PLG-7 Rabin J. Pournazarian 6-14-19 [86]

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.

23. 19-23239-B-13 JANEY WALKER
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [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). A written reply has been filed to the objection.

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

Debtor's Schedule I, Line #8g, shows that the Debtor receives pension/retirement income. This is contrary to the Debtor's Schedule A/B, Line #21, that indicates the Debtor does not have any pension/retirement accounts The Debtor has not amended her Schedule A/B to add her pension/retirement account. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Although the Trustee has also objected to confirmation on grounds that feasibility depends on the granting of a motion to value collateral for Capital One Auto Finance, the Debtor has filed a response stating that she agrees with the valuation of $8,083.00 and interest rate of 6.5% provided by the creditor. This increases Debtor's plan payments to the creditor by $7.94 per month.

Additionally, the Trustee objects to confirmation on grounds that the plan payment in the amount of $346.50 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on the monthly payment for administrative expenses and Class 2 secured claims. The aggregate of these monthly amounts plus Trustee's fee is $424.03. The Debtor has filed a response stating that it is amenable to increasing plan payments to $424.03 plus $7.94 for a total of $431.97 per month.

Because Schedule A/B has not been amended to reflect Debtor's pension/retirement account, the plan filed May 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.

24. 19-23343-B-13 CHERYL SPRAGUE
EMM-1 Mikalah R. Liviakis
Thru #25

OBJECTION TO CONFIRMATION OF PLAN BY LOAN CARE, LLC
6-27-19 [19]

CONTINUED TO 7/30/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/25/19.

Final Ruling

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

25. 19-23343-B-13 CHERYL SPRAGUE
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [15]

CONTINUED TO 7/30/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/25/19.

Final Ruling

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

26. 19-21745-B-13 LEA/HELEN ZAJAC — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 Timothy J. Walsh — 6-20-19 [19]

WELLS FARGO BANK, N.A. VS.

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 relief from stay.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 11532 Acorn Drive, Gulfport, Mississippi(the "Property"). Movant has provided the Declaration of Tanya R. Caldwell to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are three pre-petition payments in default totaling $2,662.53. Debtors' plan provides for the Property as a Class 3 claim to be surrendered.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $111,387.58 plus a 8% cost of sale at $8,928.00 as stated in the motion. The value of the Property is determined to be $11,600.00 as stated in Schedules A and D filed by Debtors.

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 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtors have 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). In fact, Debtors list the Property as a Class 3 claim to be surrendered.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to

applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay 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.

27. 18-24547-B-13 LILLIE BRACY
BLG-1 Chad M. Johnson

MOTION TO MODIFY PLAN
6-17-19 [54]

No Ruling

28. 19-21747-B-13 ARACELY RIVAS MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 6-17-19 [58]

DEBTOR DISMISSED: 6/24/2019

Final Ruling

The case having been dismissed on June 24, 2019, the motion is dismissed without prejudice. 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.

29.	19-20648-B-13 BLG-2	STEVEN-ANDREW FACTEAU Chad M. Johnson	OBJECTION TO CLAIM OF KAISER PERMANENTE, CLAIM NUMBER 3 5-30-19 [39]

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. 3 of Kaiser Permanente and the claim is disallowed in its entirety.

Steven-Andrew Facteau ("Objector") requests that the court disallow the claim of Kaiser Permanente ("Creditor"), Claim No. 3. The claim is asserted to be in the amount of $1,238.00. 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 Declaration of Steven-Andrew Facteau, the debt was incurred on May 12, 2013, and the Debtor has made no charges, payments or signed any documents with Kaiser Permanente, USCB America, or any other company collecting the debt within the last four years prior to the filing of the petition. When the case was filed on February 2, 2019, 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.

The court will enter a minute order.

30. 19-23148-B-13 MAYRA CERVANTES
JPJ-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
6-27-19 [14]

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.

The Debtor has applied for fees in the amount of $6,000.00 in connection with plan confirmation. Pursuant to Local Bankr. R. 2016-1, the maximum fee that may be charged in $4,000.00 in nonbusiness cases and $6,000.00 in business cases. Based on the Debtor's Schedules and Statement of Financial Affairs, the Debtor does not work and has not earned any income within the two calendar years preceding the petition. Although the Debtor's non-filing spouse is self-employed, he is not filing for bankruptcy. Under § 1304(a) self-employment is limited to the "debtor." 11 U.S.C. § 1304(a). The Debtor has also not incurred any trade debt from employment engaged in a business pursuant to 11 U.S.C. § 1304(a). Therefore, this case cannot be considered a business case and the Debtor may only seek approval of attorney's fees in the maximum amount of $4,000.00.

The plan filed May 16, 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.

31. 19-23049-B-13 CHRISTOPHER KELSO
JPJ-1 Harry D. Roth

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
6-27-19 [17]

CONTINUED TO 7/30/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/25/19.

Final Ruling

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

32. 19-20050-B-13 RONALD BROWN MOTION TO CONFIRM PLAN
JJC-3 Julius J. Cherry 5-31-19 [60]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. Although an opposition was filed by the Chapter 13 Trustee, it was subsequently withdrawn. No opposition to the motion has been filed by creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

33. 17-26052-B-13 TANISHA MAVY MOTION TO INCUR DEBT
TM-19 Pro Se 7-3-19 [128]

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 conditionally grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to purchase real property that will be the primary residence for the Debtor and her family. The Debtor has been offered a mortgage loan in the amount of $221,950.00 with a 30-year fixed rate at 4.25%. The monthly mortgage payment will be approximately $1,630.00, which includes the principal, interest, taxes, and insurance. This amount does not exceed the Debtor's current rent amount and will not alter the Chapter 13 plan payments or terms of the plan. Debtor has approximately 13 months remaining in plan payments. No declaration has been filed in support of the motion.

Discussion

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

Provided that the Debtor files a declaration in support of the motion by July 26, 2019, the court will find that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion will be granted.

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

The court will enter a minute order.

34.	18-26852-B-13 PLC-3	JIMMY SANTOS AND JULIE MAGHONEY SANTOS Peter L. Cianchetta	MOTION TO CONFIRM PLAN 6-11-19 [78]

No Ruling

35.	17-23854-B-13 PGM-4	TIAJUANNA TOLES Peter G. Macaluso	CONTINUED MOTION TO MODIFY PLAN 4-1-19 [80]

No Ruling

36. 18-26354-B-13 TIMOTHY/NICOLE ARSENAULT
JPJ-2 Bruce Charles Dwiggins

OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK, CLAIM NUMBER 24
6-7-19 [44]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 24 of Department Stores National Bank c/o Quantum3 Group LLC and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Department Stores National Bank c/o Quantum3 Group LLC ("Creditor"), Proof of Claim No. 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $1,349.58. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 17, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's proof of claim was filed December 18, 2018.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has

repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

37. 19-23355-B-13 STEVEN SLATER
JPJ-1 Richard Kwun

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [13]

Final 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). A written reply has been filed to the objection.

The court's decision is to continue the matter to August 20, 2019, at 1:00 p.m.

Chapter 13 Trustee Jan Johnson ("Trustee") objects to approval of the Debtor's attorney's fees in the amount of $4,000.00 in connection with plan confirmation according to 11 U.S.C. § 329 and 330, Local Bankr. R. 2016-1(c), and Fed. R. Bankr. P. 2016. The Trustee states that it is unclear who the actual attorney of record is and whether the attorney is engaging in a scheme that involves an impermissible fee sharing and abuse of the bankruptcy process. Additionally, the Right and Responsibilities of Chapter 13 Debtors and the Local Bankruptcy Rules do not allow for the payment of a portion of the fees to be paid to one firm and then the balance of that same fee to be paid to another firm.

Attorney Richard Kwun has filed a response denying the allegations raised by the Trustee and requesting at least 28-days' continuance to fully brief the issues raised by the Trustee.

The matter is continued to August 20, 2019, at 1:00 p.m. Mr. Kwun may file a response by July 30, 2019. The Trustee may file a reply by August 6, 2019.

38. 18-25756-B-13 DAVID SIMS
KAZ-2 Peter G. Macaluso

MOTION TO RECONSIDER AND/OR MOTION TO VACATE
6-19-19 [101]

Final Ruling

The court has before it a motion filed by Bosco Credit, LLC ("Bosco") to reconsider and vacate (i) the supplemental order granting Debtor David Sims' ("Debtor") motion to confirm second amended plan and (ii) the order confirming the second amended plan. Dkts. 101-109. The Debtor filed an opposition. Dkt. 110. Bosco did not file a reply.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case and in the Debtor's prior Chapter 13 case, Case No. 17-20765. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Based upon a review of all relevant matters, the court has determined that oral argument will not assist in the resolution of the motion to reconsider. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). This decision is therefore issued as a Final Ruling.

Background

The procedural history is not complicated and the facts are not in dispute. Both are set forth in detail in the June 5, 2019, supplemental order, Dkt. 97 at 1:22-3:28, and the May 21, 2019, civil minutes. Dkt. 96. For purposes of this decision, both are summarized below.

The Debtor obtained a loan from Bosco in June 2007. The loan documents state that the loan matures in June 2032. The loan is secured by a second deed of trust recorded against the Debtor's principal residence.

The Debtor defaulted on the loan. Bosco commenced a non-judicial foreclosure which accelerated the Debtor's obligation on the loan making it due and payable in full. A trustee's sale was scheduled for February 9, 2017. However, no sale occurred because on February 7, 2017, the Debtor filed his first Chapter 13 case. The Debtor's first Chapter 13 case was eventually dismissed. Less than two months later, the Debtor filed this second Chapter 13 case.

After several failed attempts to confirm a plan, the Debtor filed a second amended plan and a motion to confirm it on March 22, 2019. Dkts. 66-69. Bosco and its attorney were served with the second amended plan, the motion to confirm it, and notice of the confirmation hearing on March 22, 2019. Dkt. 70.

The second amended plan classified Bosco's claim as a Class 2 secured claim. Dkt. 68 at 3-4. The mandatory form Chapter 13 plan used in this district describes Class 2 claims as "all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." *Id.* at 3, § 3.08. Of particular relevance here, in cases in which the Class 2 claim is secured by a debtor's principal's residence (as Bosco's claim is) the form Chapter 13 plan states that "[e]xcept as permitted by 11 U.S.C. § 1322(c), Debtor is prohibited from modifying the rights of a holder of a claim secured only by Debtor's principal residence." *Id.* at § 3.08(c)(3).

Bosco opposed the motion to confirm and objected to confirmation of the second amended plan on March 25, 2019. Dkts. 71-74. Bosco asserted that the second amended plan impermissibly modified its secured claim in violation of 11 U.S.C. § 1322(b)(2) and it

was not feasible.[1] Dkt. 71.

The court held a preliminary confirmation hearing on May 7, 2019. Dkts. 91. During that hearing the court raised an issue that Bosco either overlooked or ignored in its opposition, *i.e.*, whether the Debtor could properly classify Bosco's claim as a Class 2 secured claim because Bosco accelerated the debt by its non-judicial foreclosure. Dkt. 90. The court also ordered Bosco to file its foreclosure documents by May 14, 2019, and continued the confirmation hearing to May 21, 2019, to further consider the issue. Dkt. 91. Bosco timely filed its foreclosure documents on May 14, 2019. Dkt. 92-93.

On May 20, 2019, the court posted (on its website) a tentative ruling granting the Debtor's motion to confirm (and confirming) the second amended plan. During the hearing held the following day, May 21, 2019, Bosco objected to the application of § 1322(c)(2) to its Class 2 secured claim for the first time. Dkt. 95.

A supplemental order granting the motion to confirm the second amended plan was entered on June 5, 2019. Dkt. 97. The order confirming the second amended plan was entered on June 10, 2019. Dkt. 100. Bosco filed its motion to reconsider and vacate on June 19, 2019.

Discussion

Bosco moves for reconsideration of the supplemental and confirmation orders under Federal Rule of Civil Procedure 59(e) (applicable by Federal Rule of Bankruptcy Procedure 9023) and Federal Rule of Civil Procedure 60(b) (applicable by Federal Rule of Bankruptcy Procedure 9024). Since Bosco's motion was filed within fourteen days of the entry of the supplemental and confirmation orders, the motion is decided under Rule 59(e). *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012).

Rule 59(e) may be used to correct a mistake of law. *See Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). The pendency of Bosco's Rule 59(e) motion has also forestalled the time to appeal and thereby permits the court to change its decision. *See In re Sundquist*, 570 B.R. 92, 94-95 & 98 (Bankr. E.D. Cal. 2017); *see also* Fed. R. Bankr. P. 8002(b)(1)(B). The court will avail itself of that opportunity.

The court initially rejects Bosco's argument that it somehow was deprived of an opportunity to address the § 1322(c)(2) issue and therefore denied due process. Based on the clear language of the form Chapter 13 plan, Bosco and its attorney knew or should have known as early as March 22, 2019, that § 1322(c)(2) was relevant to Bosco's initial § 1322(b)(2) objection and analysis. Indeed, the Debtor's classification of Bosco's claim as a Class 2 secured claim was nothing short of the Debtor's assertion that § 1322(c)(2)'s exception to the anti-modification provision of § 1322(b)(2) applied. *See Benafel v. One West Bank, FSB (In re Benafel)*, 461 B.R. 581, 591 (9th Cir. BAP 2011) ("[Slubsection 1322(c) (2) provides an exception to (b)(2)[.]"); *see also Palacios v. Upside Investments, LP*, 2013 WL 1615790, *4 (9th Cir. BAP 2013) ("However, § 1322(c) (2) carves out an exception to the anti-modification rule against home mortgages [.]"). Yet, Bosco and its attorney failed to properly analyze the issue in their initial opposition to the motion to confirm, or they simply chose to ignore § 1322(c)(2) altogether.

Bosco and its attorney also knew or should have known that § 1322(c) was relevant to the § 1322(b)(2) objection based on the colloquy between the court and Bosco's attorney during the May 7, 2019, preliminary confirmation hearing. Not only did Bosco's

[1]Bosco also asserted that the Debtor violated a court order by filing the second amended plan. That argument was baseless as no court order was violated.

attorney acknowledge that Bosco's non-judicial foreclosure accelerated the Debtor's obligation on the loan, but, the court ordered Bosco to file its foreclosure documents and continued the confirmation hearing specifically to consider whether Bosco's claim was properly classified as a Class 2 secured claim - and therefore whether § 1322(c)(2) was applicable - based on that acceleration. Dkt. 90 (audio at 7:20-9:12). Yet again, Bosco's attorney failed to request an opportunity to file supplemental points authorities addressing the § 1322(c)(2) issue.

The point is that Bosco received sufficient notice that § 1322(c)(2) was relevant to its § 1322(b)(2) objection. Yet, for whatever reason, be it counsel's lack of experience or something else, Bosco chose to not avail itself of multiple opportunities to address the issue. In short, the argument that Bosco and its attorney were somehow deprived of an opportunity to address the § 1322(c)(2) issue and therefore denied due process is without merit, disingenuous at best, and borders on the frivolous. Perhaps in future appearances before this court Bosco should consider selecting counsel capable of recognizing and timely addressing relevant issues so as to avoid the need to later move for reconsideration on baseless grounds.

In any event, Bosco's motion to reconsider and vacate raises at least one valid point.

The court has conducted an exhaustive review of published and unpublished decisions which discuss or address § 1322(c)(2). The court has found no decision (published or unpublished) in which § 1322(c)(2) was applied to a long-term mortgage debt accelerated by a non-judicial foreclosure commenced prepetition. Perhaps, that is because the Bankruptcy Code already provides a mechanism for dealing with such debts. Indeed, as the dissent in the Fourth Circuit's recent *en banc* opinion in *Hurlburt v. Black*, 925 F.3d 154 (4th Cir. 2019), explained:

> Congress limited § 1322(c)(2)'s application to debtors with short-term mortgages. Why limit the freedom to extend loan payments to debtors with short-term mortgages? Because debtors with long-term mortgages, where payment schedules already extend *beyond* the end of the plan, have no use for the right to extend payments *up to* the end of the plan. Paying a long-term mortgage over the duration of a plan would actually accelerate a long-term mortgage, which is the last thing the debtor needs in bankruptcy. Indeed, § 1322(c)(2) allows missed payments ('defaults') to be repaid over the duration of the plan just like future payments. This puts the rights of debtors with short-term mortgage in sync with those of long-term mortgage holders, who can cure pre-existing defaults under § 1322(b)(5).

Id. at 170 (Wilkinson, C.J., dissenting) (emphasis in original).[2] As the court previously noted, there is at least one unpublished Ninth Circuit bankruptcy appellate panel memorandum decision that arguably supports the application of § 1322(c)(2) to mortgage debts accelerated prepetition by a non-judicial foreclosure. In *Palacios*, *supra*, the debtor and his then wife owned California property which they acquired in 1994. *Id.* at *1. In 2010 the debtor obtained a $200,000.00 loan secured by a deed of trust on the California property. *Id.* The note provided for interest only payments of $2,000.00 per month with a balloon payment of $202,000.00 due on March 1, 2012. *Id.*

[2] In fact, if a debtor is able to confirm the "cure and maintain" plan described by *Hurlburt's* dissent that will effectively stave off a foreclosure started prepetition so long as the debtor remains current and does not default under the terms of the confirmed plan. *See In Re Hileman*, 451 B.R. 522, 524-525 (Bankr. C.D. Cal. 2011).

The loan documents also provided that if any of the monthly payments were not made the lender could demand immediate payment in full of all amounts then due under the note. *Id.* And that apparently is what happened.

There was a default on at least one monthly payment because on February 16, 2012, and thus weeks before the final balloon payment was due on March 1, 2012, the lender recorded a notice of default and a trustee's sale was set. *Id.*; *see also Palacios*, BAP Case No., 12-1502, Dkt. 12, Ex. 7, p.24 at ¶7.b. So although the mortgage debt was fully-matured by the time the debtor filed his Chapter 13 petition in June of 2012, *Palacios*, 2013 WL 1615790 at *1, the event that apparently matured the debt was not the final balloon payment obligation but, rather, the payment default and non-judicial foreclosure acceleration.

Palacios was decided in the context of a motion for relief from the automatic stay in which the lender sought relief on the basis that the debtor failed to make postpetition payments. *Id.* at *1-*2. In opposing the motion, debtor argued that no postpetition payments were required because the loan was fully matured when the bankruptcy case was filed which meant no payments could have come due postpetition. *Id.* at *4. The bankruptcy appellate panel rejected that argument and cited § 1322(c)(2) as the basis on which the debtor would have had an obligation to make some postpetition payments to the lender under the terms of a confirmed plan. *Id.* And therein lies the significance, namely; a recognition that a mortgage accelerated by commencement of a prepetition non-judicial foreclosure can fall within § 1322(c)(2).

The bankruptcy appellate panel in *Palacios* could have easily reached its conclusion regarding the applicability of § 1322(c)(2) to the debtor's loan by simply noting that the loan matured by its terms because of the unpaid balloon payment which was due before the petition was filed. In other words, there was no need to mention the monthly payment default and the non-judicial foreclosure in the context of the § 1322(c)(2) discussion if those events were not relevant to the § 1322(c)(2) analysis. Nevertheless, in its final analysis, the bankruptcy appellate panel emphasized the fact that the debtor's obligation "matured by its own terms prior to the bankruptcy" because the debtor "did not pay the final balloon payment as agreed." And that is a compelling indication it was indeed the balloon payment and not the foreclosure the bankruptcy appellate panel ultimately viewed as the triggering event that accelerated the mortgage debt and made § 1322(c)(2) applicable. Moreover, nearly every decision applying § 1322(c)(2) limits its application to precisely those circumstances, *i.e.*, in addition to short-term obligations, debts matured by their own terms and with unpaid balloon payments.

Support for the application of § 1322(c)(2) to long-term mortgage debts accelerated by a non-judicial foreclosure also appears in *In re Hubbell*, 496 B.R. 784 (Bankr. E.D.N.C. 2013), where the court stated "that Section 1322(c)(2) should be interpreted as permitting the modification of payment terms even when the debt is due in full-whether by maturity or default-prior to the proposed date of the final payment under the plan." *Id.* at 792. *Hubbell* supported that statement with a citation to and quotation from *In re Griffin*, 489 B.R. 638, 642-43 (Bankr. D. Md. 2013). *Griffin*, in turn, was based on examination of *Witt v. United States Companies Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. 1997), which the Fourth Circuit sitting *en banc* overruled in *Hurlburt*, *supra*. *See Hurlburt*, 925 F.3d at 167. *Hubbell's* statement is therefore dubious in light of *Hurlburt*.

On the other hand, several courts have affirmatively stated that § 1322(c) is inapplicable to long-term mortgage debts matured by a prepetition foreclosure. For example, the court in *In re Tekavec*, 476 B.R. 555 (Bankr. E.D. Wis. 2012), stated that "courts do not extend § 1322(c)(2) to cases in which a default or mortgage foreclosure accelerated the mortgage." *Id.* at 557. Similarly, *In Re Sims*, 185 B.R. 853, 856 (Bankr. N.D. Ala. 1995), the court found § 1322(c)(2) inapplicable where, as here, the debt was accelerated by a prepetition foreclosure. And in *In re Maiorino*, 2009 WL 614819 (Bankr. W.D.N.Y. 2009), the court stated that "Section 1322(c)(2) does not apply

to a long-term mortgage that, but for a debtor's prepetition default and acceleration, would by its terms have extended beyond the term of the Chapter 13 plan[.]" *Id.* at *2.

Conclusion

Upon further consideration (and reconsideration), and for the foregoing reasons, the court is persuaded that § 1322(c)(2)'s exception to § 1322(b)(2) is not triggered where, as here, a long-term mortgage debt secured by the debtor's principal residence matures prepetition only because it is accelerated by a non-judicial foreclosure. The court will therefore enter an order as follows:

(1) Bosco's motion to reconsider, Dkt. 101, is GRANTED;

(2) the supplemental order entered June 5, 2019, Dkt. 97, and the confirmation order entered June 10, 2019, Dkt. 100, are VACATED;

(3) the Debtor's motion to confirm the second amended plan, Dkt. 66, is DENIED WITHOUT PREJUDICE on the basis that the classification of Bosco's claim as a Class 2 secured claim is an impermissible modification of Bosco's secured claim under § 1322(b)(2);

(4) The Debtor shall have 90 days to confirm a plan or this case may be dismissed on the Chapter 13 Trustee's ("Trustee") ex parte application; and

(5) The Trustee shall not be required to recover payments made to creditors under the previously confirmed second amended plan.

All other grounds for reconsideration raised in the motion are overruled as moot.

The court will enter a minute order.

39.	19-22857-B-13 AP-1	LAURA KEISTER Len ReidReynoso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS, INC. 6-6-19 [15]

Final Ruling

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

There being no other objection to confirmation, the plan filed May 3, 2019, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE 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.

40.	18-24759-B-13 SJT-1	RICHARD CAMILLIERI Susan J. Turner	CONTINUED MOTION TO INCUR DEBT 6-5-19 [37]

No Ruling

41. 19-23259-B-13 MJ DE LA CRUZ
JPJ-1 Susan J. Turner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 2, 2019. The confirmation hearing for the amended plan is scheduled for August 6, 2019. The earlier plan filed May 22, 2019, is not confirmed.

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

The court will enter a minute order.

42. 19-21760-B-13 GG-1 **Thru #43**

ROYCE KOHLER AND DONALD HENKLE
Gerald B. Glazer

MOTION TO CONFIRM PLAN
5-24-19 [20]

Tentative Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has reviewed the motion, opposition, first amended plan, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

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

Debtors Royce Carson Kohler and Donald Edwin Henkle ("Debtors") move to confirm a first amended plan. The Chapter 13 Trustee ("Trustee") opposes the motion and objects to confirmation. For the reasons explained below the Trustee's objection will be sustained, the motion to confirm the first amended plan will be denied without prejudice, and the first amended plan will not be confirmed.

Background

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 initial plan classified 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 Trustee objected to confirmation of the Debtors' initial plan on April 25, 2019. Dkt. 13. The Trustee objected to confirmation on the basis that the initial plan improperly classified the WFB mortgage as a Class 4 claim when it should have been classified as a Class 1 claim because of a prepetition default. *Id.*, ¶2.

Following a hearing held on May 14, 2019, the court sustained the Trustee's objection and denied confirmation of the Debtors' initial plan for two reasons: (1) the plan impermissibly classified the WFB secured mortgage claim in Class 4 when, based on a prepetition default, it should have been classified in Class 1; and (2) even if the WFB secured mortgage claim could be classified as a Class 4 claim the court was not persuaded that the initial plan was feasible. Dkt. 17.

Debtors thereafter filed a first amended plan on May 24, 2019. Dkts. 19-24. The first amended plan again classifies the WFB mortgage claim as a Class 4 claim. Dkt. 19 at 4, § 3.10. And once again, the Trustee opposes the motion to confirm and objects to confirmation of the first amended plan on the basis that the Class 4 classification is improper based on the same prepeptition default. Dkt. 25. The court agrees with the Trustee.

Discussion

There is no dispute that WFB mortgage claim was in default when the Debtors filed their Chapter 13 petition. The court explained this extensively in its civil minutes of May 14, 2019, which are incorporated herein by this reference. Dkt. 17. The Debtors concede the existence of this prepetition default. Dkt. 29 at 1:22-23 ("Before debtors filed their bankruptcy, they were late on their March mortgage payment.").

Debtors claim they cured their prepetition default by making a postpetition payment to WFB. There are two problems with that argument. First, as WFB recognizes, the Debtors' postpetition payment cannot be applied to satisfy prepetition debt. Dkt. 32 at 2. Second, any attempt by WFB to collect a prepetition debt postpetition or to apply postpetition payments in satisfaction of prepetition debt outside the Chapter 13

process would be a violation of the automatic stay. *See generally Zotow v. Johnson (In re Zotow)*, 432 B.R. 252, 260 (9th Cir. BAP 2010) (receipt of payments from the chapter 13 trustee does not violate the automatic stay even if mortgage lender later misapplied payments to prepetition debt). Such an action would also be void. *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009). The point is, the Debtors' postpetition payment does not eliminate or negate the existence of a prepetition default when the Debtors' petition was filed. And it is that prepetition default that dictates classification of the WFB mortgage claim in this Chapter 13 case.

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.[2] 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).

It is true that the Bankruptcy Code does not prohibit debtors from making postpetition mortgage payments directly to his or her lender. *See Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). However, it is equally true that the right to make direct payments is not absolute and the bankruptcy court may, in its discretion, condition by local rule or general order the circumstances under which direct payments may be made. *Id.* at 46-47, 53; *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 & 690-91 (9th Cir. BAP 2010). The Eastern District of California Bankruptcy Court has done precisely that through both a local rule and general order which establish a Class 1 and Class 4 classification structure.

It may be possible in an appropriate case and under appropriate circumstances to confirm a plan that provides for direct payments to the creditor on a debt that was in

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[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.

[2] 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 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.

default when the petition was filed. Indeed, Local Bankruptcy Rule 1001-1(f) 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.

However, this is not an appropriate case to depart from the otherwise applicable Class 1 and Class 4 classification structure. As the court explained in the civil minutes of May 14, 2019, the court is not persuaded that the first amended plan is feasible if the WFB mortgage claim is included in Class 4 and paid directly by the Debtors.[3] *See* 11 U.S.C. § § 1325(a)(6). The court will also not permit the Debtors to cure a prepetition default and pay prepetition debt postpetition for the sole purpose of manipulating the otherwise applicable classification structure.

Conclusion

Based on the foregoing, the Trustee's objection that the Debtors' first amended plan improperly classifies the WFB mortgage claim in Class 4 is sustained, the Debtor's motion to confirm the first amended plan is denied without prejudice, and the first amended plan is not confirmed.

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

The court will enter a minute order.

43.	19-21760-B-13 GG-2	ROYCE KOHLER AND DONALD HENKLE Gerald B. Glazer	OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 3 6-7-19 [29]

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 court has reviewed the objection, and all related declarations and exhibits. The court takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to overrule the objection to Claim No. 3 of Wells Fargo Bank,

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[3] When a purported prepetition default consists entirely of a de minimus escrow shortage and not a payment default the court has allowed the escrow shortage to be paid by the debtor so that the debtor could then include a secured mortgage claim in Class 4. That is not the case here. As explained in the civil minutes of May 14, 2019, in addition to an escrow shortage the default here is a default in monthly mortgage payments. And when that mortgage payment default is considered in the context of the Debtors' substantial (and unexplained) history of non-payment of nearly all other creditors, also explained in detail in the civil minutes of May 14, 2019, the court is not persuaded that a direct payment plan as proposed is feasible even if the Debtors have recently managed to make a few postpetition mortgage payments.

N.A.

Debtors object to the claim of Wells Fargo Bank, N.A. ("Creditor"). Debtors offer no basis for disallowing Creditor's proof of claim. *See* 11 U.S.C. § 502(b). In fact, Debtors admit that Creditor's proof of claim, which reflects a prepetition default, is accurate as filed notwithstanding the purported postpetition payment of the prepretition arrears. Dkt. 29 at 1:22-23 ("Before the debtors filed their bankruptcy, they were late on their March mortgage payment."). As explained in the ruling on the motion at Docket Control No. GG-1, the Debtors and Creditor cannot eliminate or invalidate the prepetition default with a postpetition payment and the court will permit neither to do so in order to manipulate payment priorities and claim classification. The Debtors' objection to Creditor's proof of claim is therefore overruled.

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

The court will prepare a minute order.

44.	19-23262-B-13 JPJ-1 **Thru #45**	WILLIE CLARENCE III. AND AMY BURNS Fred A. Ihejirika	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 6-27-19 [20]

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 are delinquent to the Chapter 13 Trustee in the amount of $1,114.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, creditor Quicken Loans filed a proof of claim number 3-1 on June 20, 2019, listing a pre-petition arrearage of $1,503.04. This is evidence that a pre-petition arrearage existed at the time of the petition and that direct pay or Class 4 treatment to Quicken Loans is improper. Since Debtors schedule Quicken Loans in their plan under Section 3.10, Class 4, the Debtors' plan does not comply with 11 U.S.C. §§ 1325(a)(1) and (6).

Third, the plan does not comply with 11 U.S.C. § 132(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. By adding Debtors' monthly disposable income of $126.85 to the overstated expenses of $507.31 (Line #23 for overstated phone expense) and $329.17 (Line #29 for overstated education expenses), Line #45 monthly disposable in come increases to $963.33. This means that the Debtors must pay no less than $57,799.80 to their unsecured non-priority creditors. The Debtors are proposing to pay a 3% dividend to their unsecured, non-priority creditors or $2,545.85.

Fourth, the Debtors failed to amend the Statement of Financial Affairs and properly disclose the amount of fees they paid to their attorney as requested by the Trustee. The Debtors have failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed May 22, 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.

45.	19-23262-B-13 NLG-2	WILLIE CLARENCE III. AND AMY BURNS Fred A. Ihejirika	OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS, INC. 6-11-19 [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 for reasons stated at Item #44 and deny the motion for attorney's fees.

Creditor Quicken Loans filed a proof of claim number 3-1 on June 20, 2019, listing a pre-petition arrearage of $1,503.04. This is evidence that a pre-petition arrearage existed at the time of the petition and that direct pay or Class 4 treatment to Quicken Loans is improper. Since Debtors schedule Quicken Loans in their plan under Section 3.10, Class 4, the Debtors' plan does not comply with 11 U.S.C. §§ 1325(a)(1) and (6).

The request for attorney's fees is denied.

The plan filed May 22, 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 for attorney's fees is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

46. 18-26566-B-13 JOSEPH/ROSEMARY ROSS
JPJ-1 Gabriel E. Liberman

OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK, CLAIM NUMBER 22
6-7-19 [25]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 22 of Department Stores National Bank c/o Quantum3 Group, LLC and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Department Stores National Bank c/o Quantum3 Group, LLC ("Creditor"), Proof of Claim No. 22 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $863.47. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 27, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed December 28, 2018.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has

repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

47. 19-23167-B-13 SHANNON HAND
JPJ-1 Ryan Keenan

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [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.

The plan does not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and does not provide for all of Debtor's monthly net income. According to Line #23 of Schedule J, the Debtor's monthly net income is $1,741.50 per month. This is $666.50 more than the Debtor's proposed plan payment of $1,075.00. The Debtor does not explain why she is not paying the entire monthly net income into a plan that does not propose to pay her nonpriority unsecured creditors in full. The plan does not comply with 11 U.S.C. § 1325(a)(1).

The plan filed May 16, 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.

48. 19-23068-B-13 OMAR URCUYO
JPJ-1 Peter G. Macaluso
Thru #49

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [22]

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 is delinquent to the Chapter 13 Trustee in the amount of $3,075.00, which represents approximately 1 plan payment. The Debtor has failed to commence plan payments since the petition was filed on May 14, 2019. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan cannot be assessed for feasibility due to language in the Nonstandard Provisions which states, "Lump sum of $55,550.00 (or an amount sufficient to complete the plan) on or before the 36th month." The plan fails to indicate the source of the lump sum and the Debtor has not provided any evidence that he will have the ability to make this lump sum. The Debtor has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has claimed an interest in a timeshare, two vehicles, furniture, appliances, electronic equipment, kitchen items, knick-knacks, outdoor items, pictures, books, clothing, costume and valuable jewelry, two bank accounts, a trust, and hand tools as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Fourth, the Debtor has failed to provide a written declaration from the family member who provides $1,575.00 per month in assistance to the Debtor. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed May 28, 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.

49. 19-23068-B-13 OMAR URCUYO
MJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A.
6-10-19 [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 overrule the objection and deny confirmation for reasons stated at Item #48.

Objecting creditor U.S. Bank Trust, N.A. holds a deed of trust secured by the Debtor's residence. The creditor asserts $402,979.94 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed May 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #48. The objection is overruled and 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.

50.	17-27670-B-13 RJ-3	DONNETTE DESANTIS Richard L. Jare	MOTION TO MODIFY PLAN 6-4-19 [69]

No Ruling

51.	19-23171-B-13 JPJ-1	MARIA AZTIAZARAIN Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 6-27-19 [16]

Final Ruling

The case was dismissed on July 19, 2019. Therefore, the objection to confirmation is overruled as moot.

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

The court will enter a minute order.

52. 19-23272-B-13 ALLEN FOWLER
JPJ-1 Scott D. Shumaker
Thru #54

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [27]

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 granting of a motion to value collateral for California Housing Finance Agency in Class 2C. That motion is granted at Items #53 and #54.

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

Third, the maximum fee that may be charted in a nonbusiness case is $4,000.00 pursuant to Local Bankr. R. 2016-1. The Debtor may not seek approval of attorney's fees in the amount of $6,000.00 since the Debtor's bankruptcy is a nonbusiness case. According to Schedules I & J, the Debtor is employed by Penske Logistics, LLC, which means he is an employee of a separate legal entity. On Question 4 of the Statement of Financial Affairs the Debtor also reports that he has received "wages" from his employment. This case does not qualify as a business case under 11 U.S.C. § 1304(a).

The plan filed May 29, 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.

53. 19-23272-B-13 ALLEN FOWLER
SS-1 Scott D. Shumaker

MOTION TO VALUE COLLATERAL OF CALIFORNIA HOUSING FINANCE AGENCY
7-9-19 [32]

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 value the secured claim of California Housing Finance Agency at $0.00.

Debtor's motion to value the secured claim of California Housing Finance Agency ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6227 El Camino Drive, Pollock Pines, California ("Property"). Debtor seeks to value the Property at a fair market value of $390,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *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 $419,000. *See* dkt. 32, 36. A second deed of trust secures a claim with a balance of approximately $15,513. Creditor's third deed of trust secures a claim with a balance of approximately $14,287.10. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re*

Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

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

The court will enter a minute order.

54.	19-23272-B-13 SS-2	ALLEN FOWLER Scott D. Shumaker	MOTION TO VALUE COLLATERAL OF CALIFORNIA HOUSING FINANCE AGENCY 7-9-19 [36]

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 value the secured claim of California Housing Finance Agency at $0.00.

Debtor's motion to value the secured claim of California Housing Finance Agency ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6227 El Camino Drive, Pollock Pines, California ("Property"). Debtor seeks to value the Property at a fair market value of $390,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *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 $419,000. *See* dkt. 32, 36. Creditor's second deed of trust secures a claim with a balance of approximately $15,513. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

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

The court will enter a minute order.

55. 19-22973-B-13 JOSEPHINE WILLIAMS
JPJ-1 Kristy A. Hernandez

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-11-19 [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.

This matter was continued from July 2, 2019, to provide the Debtor the opportunity to appear at her continued meeting of creditors held July 11, 2019. The Debtor did not appear as required pursuant to 11 U.S.C. § 343.

The plan filed May 9, 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.

56. 19-22875-B-13 DANIEL DRESEN MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 6-17-19 [20]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 will issue its ruling from the parties' pleadings.

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

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

57. 19-20077-B-13 JOHN JAMES
PGM-3 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
6-24-19 [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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has offered a trial loan modification that will become permanent once Debtor completes the payments. The Debtor is to make four payments each in the amount of $1,409.82 beginning May 1, 2019, with the last payment made by July 1, 2019. The loan modification will assist the Debtor in being able to make current loan payments and to keep his real property.

The motion is supported by the Declaration of John C. James. The Declaration affirms Debtor's desire to obtain the post-petition financing and states that the modification will not affect the distribution to unsecured creditors who will be paid 100% under the terms of the confirmed plan.

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

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

The court will enter a minute order.

58. 18-26478-B-13 PAMELA CASEY — OBJECTION TO CLAIM OF SYNCHRONY
JPJ-1 Mark A. Wolff — BANK, CLAIM NUMBER 12
6-7-19 [22]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to overrule the objection to Claim No. 12 of Synchrony Bank.

Jan Johnson ("Objector") requests that the court disallow the claim of Synchrony Bank ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,805.72. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c).

Creditor Synchrony Bank filed an objection stating that it timely filed its proof of claim by the deadline of December 26, 2018, and that the Trustee is mistaken that the deadline for non-governmental units to file a proof of claim was December 24, 2018.

The deadline for filing proofs of claim in this case for a non-government unit was December 26, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed on December 26, 2018, and therefore was timely.

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

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

The court will enter a minute order.

59. 17-27281-B-13 ERIN BROWN
MJD-2 Matthew J. DeCaminada

MOTION TO MODIFY PLAN
6-7-19 [25]

Thru #60

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.

60. 17-27281-B-13 ERIN BROWN
MJD-3 Matthew J. DeCaminada

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTOR'S ATTORNEY(S)
6-13-19 [31]

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

Matthew J. DeCaminada ("Applicant") substituted into this case to represent debtor Erin Brown ("Debtor"), who was formerly represented by attorney Scott J. Sagaria. Prior to substituting into the case, Applicant did not take any retainer or fees from Debtor. Pursuant to the filed Statement of Financial Affairs, dkt. 1, the Debtor paid a total of $1,350.00 to Sagaria Law, P.C. prior to the case being filed. Sagaria Law, P.C. received another $2,650.00 following the confirmation of the Debtor's plan from the Chapter 13 Trustee. To date, $0.00 in attorney fees and costs have been paid by the Trustee through the Debtor's plan to Applicant.

Applicant requests $1,500.00 in fees, which is a reduction from $1,560.00, for 6.80 hours in preparing and filing a Substitution of Attorney (MJD-1), setting up Debtor's file within the firm, reviewing the Debtor's documents filed by her previous attorneys, preparing and filing a modified plan and motion to confirm the plan (MJD-2), preparation of the instant fee application (MJD-3), and subsequent correspondence and meetings with the Debtor to maintain the case.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 34.

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 substituted into this case following the passing of attorney Scott J. Sagaria. He has not been paid any attorney's fees or costs since substituting in and is not engaged in the sharing of fees with any other person or entity. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Fees	$1,500.00
Costs and Expenses	$ 0.00

The motion is ORDERED GRANTED for additional fees of $1,500.00 and additional costs and expenses of $0.00.

The court will enter a minute order.

61.	19-21681-B-13 PGM-1	MICHELLE SWIFT Peter G. Macaluso	MOTION TO CONFIRM PLAN 6-17-19 [34]

No Ruling

62. 19-23082-B-13 DUANE ZAMBOANGA
JPJ-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [16]

WITHDRAWN BY M.P.

Final Ruling

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

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

The court will enter a minute order.

63. 14-27284-B-13 ANDREW/ROWENA CHAMP MOTION TO MODIFY PLAN
DJC-6 Diana J. Cavanaugh 6-14-19 [103]

No Ruling

64.	18-26684-B-13 JPJ-2	PEARLIE ABELEDA Ryan Keenan	OBJECTION TO CLAIM OF NUCP, LLC, CLAIM NUMBER 6 6-7-19 [75]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 6 of NUCP LLC c/o Kimball Tirey St. John LLP and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of NUCP LLC c/o Kimball Tirey St. John LLP ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $2,661.53. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 2, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's proof of claim was filed January 7, 2019.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding

is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

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

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

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

The court will enter a minute order.

65. 19-21385-B-13 RICHARD/MONICA VINEY MOTION TO CONFIRM PLAN
MMM-2 Mohammad M. Mokarram 6-11-19 [30]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 will issue its ruling from the parties' pleadings.

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

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

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

66. 19-23485-B-13 LEONA KREUN
JPJ-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [13]

CONTINUED TO 7/30/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 7/25/19.

Final Ruling

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

67. 19-24285-B-13 TRAVIS GROSJEAN MOTION TO EXTEND AUTOMATIC STAY
MS-1 Mark Shmorgon 7-8-19 [8]

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 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 July 14, 2019, due to failure to timely file documents (case no. 19-22617, dkts. 13, 21, 22). 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 asserts that the prior and present case were filed in order to save Debtor's residence from foreclosure. The prior case had failed because Debtor had represented himself pro se and sought the assistance of an attorney friend. Debtor's circumstances have changed in this case because he has retained competent bankruptcy counsel to prosecute this case.

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.

68. 18-24489-B-13 MATTHEW/ARIANA VICKERS
JPJ-3 W. Steven Shumway
Thru #69

OBJECTION TO CLAIM OF DISNEY VACATION CLUB MANAGEMENT, LLC, CLAIM NUMBER 12
6-7-19 [207]

DEBTORS DISMISSED:
07/03/2019

Final Ruling

The case having been dismissed on July 3, 2019, the objection is dismissed without prejudice. 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.

69. 18-24489-B-13 MATTHEW/ARIANA VICKERS
JPJ-4 W. Steven Shumway

OBJECTION TO CLAIM OF DISNEY VACATION CLUB MANAGEMENT, LLC, CLAIM NUMBER 11
6-7-19 [211]

DEBTORS DISMISSED:
07/03/2019

Final Ruling

The case having been dismissed on July 3, 2019, the objection is dismissed without prejudice. 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.

70. 17-25092-B-13 RHIANNON NICHOLS
TAG-4 Ted A. Greene

MOTION TO VACATE DISMISSAL OF CASE
6-17-19 [62]

DEBTOR DISMISSED: 05/23/2019

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). The court has reviewed the motion and all related declarations and exhibits. The court takes judicial notice of the docket. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. Based upon a review of all relevant matters, the court has determined that oral argument will not assist in the resolution of the motion to reconsider. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). This decision is therefore issued as a Final Ruling.

The court's decision is to deny the motion without prejudice to the re-filing of a new Chapter 13 case.

Discussion

The order dismissing this Chapter 13 case was entered on May 23, 2019. Dkt. 58. Debtor Rhiannon Nichols ("Debtor") moved to vacate the dismissal order on June 17, 2019. Dkt. 62.

Debtor moves to vacate the dismissal for excusable neglect under Federal Rule of Civil Procedure 60(b)(1) applicable by Federal Rule of Bankruptcy Procedure 9024. *See* Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024. Debtor states she believed she complied with an agreement with the Chapter 13 Trustee ("Trustee") whereby she would make a May 2019 payment of $240.00 plus a $190.00 past due balance before May 20, 2019. Debtor states she paid the entire amount on May 16 or 17. However, Debtor's exhibits show payment of only $195.00 on May 20, 2019. *See* Dkt. 65, Ex. C. An email between Debtor's attorney and the Trustee's office further states that the Debtor failed to make the $240.00 May payment and that she was late on the payment she did make. *See* Dkt. 65, Ex. B.

Rule 60(b)(1)

Rule 60(b)(1) permits the court to relieve a party from an final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect under Rule 60(b) is governed by the *Pioneer-Briones* factors which are: (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). Debtor addresses only the third factor. The court addresses all factors.

The first factor weighs against granting relief. When this case was dismissed the automatic stay of § 362(a) terminated for all purposes as to all creditors. Once terminated the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming that vacating the dismissal order could revive the

automatic stay, *see State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so would result in confusion and undue prejudice to creditors who may not necessarily comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay.

The second factor weighs against granting relief. The Debtor waited nearly one month after the case was dismissed before moving to vacate the dismissal order. The Debtor then set the hearing on the motion to vacate for the following month despite the availability of a shorter hearing notice procedure. *See* Local Bankr. R. 9104-1(f)(2) and (3). The Debtor has provided no explanation for the delay. The need to confirm a modified plan in order to account for the two months of nonpayment while this case was dismissed would further delay the administration of this case at the very least another month, and that assumes the Debtor is able to propose a confirmable plan.

The third factor weighs against granting relief. Debtor failed to pay the entire amount due. Timely payment of the proper amount was entirely within Debtor's control, particularly where there is no explanation why the full amount was not paid.

The fourth factor weighs in favor of granting relief. The court perceives no bad faith by the Debtor.

On balance, the *Pioneer-Briones* factors weigh against relief from the dismissal order for excusable neglect. Relief under Rule 60(b)(1) will therefore be denied.

Conclusion

For all the foregoing reasons, the Debtor's motion to reconsider and vacate the order dismissing this Chapter 13 case is denied without prejudice to the re-filing of a new Chapter 13 case.

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

The court will enter a civil minute order.

71. 19-23192-B-13 CIELO MASADAO-GOWERS
JPJ-1 Chad M. Johnson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [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). A 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) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Specifically, Form 122C-2 Lines #33d and #41 are overstated. By adding the overstated expenses, the Debtor's monthly disposable income at Line #45 increases from $182.02 to $716.72. This means that the Debtor must pay no less than $43,003.20 to unsecured, non-priority creditors. The plan proposes to pay a 13% dividend to unsecured, non-priority creditors or $13,451.01.

The issue regarding delinquency in plan payments has been resolved. The Debtor is current on plan payments with last payment of $878.00 received on July 1, 2019.

Debtor has filed a response stating that he agrees with the Trustee's calculations and requests that the matter be continued to allow him to propose a new plan payment or file an amended plan.

Because the plan is not confirmable, the Debtor will be given 60 days to confirm a plan. 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 plan filed May 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.

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.

72. 19-22994-B-13 KATHERINE REINECK
BW-1 Joseph M. Canning

OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS BANK
6-27-19 [15]

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 USAA Federal Savings Bank holds a security interest in a 2013 Chevrolet Volt. The creditor has filed a timely proof of claim in which it asserts $426.79 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) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed May 10, 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.

73. 18-23795-B-13 DENNIS GARRETT
TGM-1 Bonnie Baker

MOTION TO APPROVE LOAN MODIFICATION
6-25-19 [257]

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 as moot.

On July 2, 2017, the court heard Debtor's continued motion to approve loan modification. Dkt. 203, BB-13. The matter was continued because the loan modification agreement filed June 14, 2019, dkt. 250, was not signed by lender Specialized Loan Servicing, LLC. However, the lender filed its own motion to approve loan modification, dkt. 257, which the court deemed as the lender's consent to approve the loan modification. The court granted the Debtor's motion to approve loan modification at dkt. 203 in light of the lender's motion at dkt. 257. *See* dkt. 267.

Therefore, the motion is denied as moot.

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

The court will enter a minute order.

74. 19-23098-B-13 GARY VITALIE
JPJ-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
6-27-19 [14]

Final 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). A written reply has been filed to the objection.

The court's decision is to continue the matter to August 20, 2019, at 1:00 p.m.

Chapter 13 Trustee Jan Johnson ("Trustee") objects to approval of the Debtor's attorney's fees in the amount of $4,000.00 in connection with plan confirmation according to 11 U.S.C. § 329 and 330, Local Bankr. R. 2016-1(c), and Fed. R. Bankr. P. 2016. The Trustee states that it is unclear who the actual attorney of record is and whether the attorney is engaging in a scheme that involves an impermissible fee sharing and abuse of the bankruptcy process. Additionally, the Right and Responsibilities of Chapter 13 Debtors and the Local Bankruptcy Rules do not allow for the payment of a portion of the fees to be paid to one firm and then the balance of that same fee to be paid to another firm.

Attorney Mark Shmorgon has filed a response denying the allegations raised by the Trustee and requesting a four-week continuance to fully brief the issues raised by the Trustee.

The issue regarding delinquency in plan payments has been resolved. The Debtor is current on plan payments with last payment of $150.00 received on July 2, 2019.

The matter is continued to August 20, 2019, at 1:00 p.m. Mr. Shmorgan may file a response by July 30, 2019. The Trustee may file a reply by August 6, 2019.

75. 15-23799-B-13 STEPHANY MURPHY
MJD-2 Matthew J. DeCaminada

MOTION TO APPROVE LOAN MODIFICATION
6-11-19 [101]

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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. LoanCare, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a trial loan modification that will reduce Debtor's mortgage payment from the current $1,847.37 a month to $1,710.95 a month. The modification will consist of three trial loan modification payments effective May 1, 2019, through July 1, 2019.

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

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

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

The court will enter a minute order.

76.	18-26099-B-13 JPJ-1	EDWARD/CONCEPCION GANS Eric John Schwab	OBJECTION TO CLAIM OF DEPARTMENT STORES NATIONAL BANK, CLAIM NUMBER 34 6-7-19 [20]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 34 of Department Stores National Bank c/o Quantum3 Group, LLC and the claim is disallowed in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Department Stores National Bank c/o Quantum3 Group, LLC ("Creditor"), Proof of Claim No. 34 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $1,960.31. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 6, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed December 7, 2018.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

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

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has

repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

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

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

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

The court will enter a minute order.

77. 19-22099-B-13 ELDRIDGE JACKSON MOTION TO RECONSIDER
TJS-1 Lucas B. Garcia 7-9-19 [51]

Final Ruling

The court has before it a motion filed by Debtor Eldridge Jackson ("Debtor") to reconsider and reverse a previously-entered order terminating the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301. Secured creditor Shelter Financial Services ("Creditor") filed an opposition. Debtor did not file a reply.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Based upon a review of all relevant matters, the court has determined that oral argument will not assist in the resolution of the motion to reconsider. *See* Local Bankr. R. 9014-1(h); *see also Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues this decision as a Final Ruling.

Background

The subject of the Debtor's motion to reconsider and the order the Debtor asks the court to reconsider is a 2016 Freightline Casadia ("Vehicle"). The Vehicle is valued at $16,000.00. Dkt. 41. That value is consistent with the value stated in Schedule D. Dkt. 11. The Vehicle is also collateral for the Debtor's obligation to Creditor in the amount of at least $26,625.01. Dkt. 41. The Debtor does not dispute these figures.

The Debtor filed this Chapter 13 case on April 4, 2019. Dkt. 1. Thirteen days later on April 14, 2019, the Debtor filed Schedules under penalty of perjury which state that the Vehicle was then in the possession of his father but its whereabouts were unknown. Dkt. 11, Sch. D, p.2. The Debtor also filed a plan on April 17, 2019, which classified Creditor's claim as a Class 3 claim to be satisfied by the surrender of the Vehicle. Dkt. 12.

In the absence of postpetition payments, and based on a plan that provided for the surrender of the Vehicle, on June 14, 2019, Creditor moved for relief from the automatic and co-debtor stays. Dkts. 30-35. The motion was heard and ordered granted on July 2, 2019. Dkt. 37, 38, & 41.

The court granted Creditor's motion and terminated the automatic stay for cause under § 362(d)(1) based on the absence of postpetition payments and Creditor's lack of adequate protection. Dkt. 41. The court alternatively granted Creditor's motion and terminated the automatic stay under § 362(d)(2) due to the absence of equity in the Vehicle and, based on the surrender proposed in the then-pending plan, the Vehicle was not necessary for the Debtor's effective reorganization. *Id.* The co-debtor stay terminated under § 1301(c)(2) based on the then-pending plan that proposed to not pay Creditor's claim. And because the Debtor and his attorney were unable to disclose the Vehicle's location, the court also declined to provide the Debtor with continued protection of any stay so as to not facilitate concealment of Creditor's collateral. Dkts. 37-38 (audio).

The order granting Creditor's motion and terminating the automatic and co-debtor stays was filed on July 9, 2019, and entered on July 10, 2019. Dkt. 50. Debtor filed and served the motion to reconsider on July 9, 2019. Dkts. 51-55. Creditor filed an opposition on July 16, 2019. Dkts. 61-65.

Discussion

The motion to reconsider fails to state the legal basis and grounds on which relief is

requested. And it merely asks the court to "reverse its order that terminated the *automatic* stay." Dkt. 51 at 4:13 (emphasis added). The court will therefore not reconsider termination of the co-debtor stay. In other words, reconsideration is limited to the automatic stay as requested.

Filed within fourteen days of the entry of the order granting Creditor's motion, the court construes the Debtor's motion to reconsider as one brought under Federal Rule of Civil Procedure 59(e) applicable by Federal Rule of Bankruptcy Procedure 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012). Relief under Rule 59(e) is an extraordinary remedy which is used sparingly and typically granted on only one of four grounds: (1) if necessary to correct manifest errors of law or fact; (2) if necessary to present newly discovered or previously unavailable evidence; (3) if necessary to prevent manifest injustice; or (4) if an amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

The only basis for the relief requested which the court is able to discern from the motion to reconsider is a purported mistake of law or fact. More precisely, the Debtor maintains that the court granted Creditor's motion and terminated the automatic stay based on a mistaken assumption that the Debtor was hiding the Vehicle. Dkt. 51, ¶ 5. Not so.

Between April 17, 2019, when the schedules were filed, and July 2, 2019, when Creditor's motion was heard, the Debtor could not (or would not) disclose the Vehicle's location. Call it hidden, call it misplaced, or call it simply an inability or unwillingness to remember. The point is, allowing the automatic stay to remain in place under those circumstances would have, at worse, facilitated a concealment of Creditor's collateral and, at best, facilitated efforts to frustrate, hinder, or delay Creditor. In this court's view, both are an abuse of the Bankruptcy Code, bad faith, and sufficient cause for relief under § 362(d)(1) regardless of how the Debtor's conduct is labeled.

Beyond that, the Debtor makes no mention of the other grounds upon which relief was granted. When Creditor's motion was heard there was no equity in the Vehicle. The Debtor's then-pending plan also provided for the surrender of the Vehicle which, for all purposes, was an admission by the Debtor that the Vehicle was not necessary for his effective reorganization. So when the Creditor's motion was initially heard there also was a basis for relief under § 362(d)(2). There is no error in law or fact in that conclusion.

There still is no equity in the Vehicle. And by the Debtor's own admission, the Vehicle remains unnecessary for his effective reorganization. The Debtor does not use the Vehicle to generate income because, as the Debtor concedes, the Vehicle is used exclusively by his father. So just as the Vehicle was not necessary for the Debtor's effective reorganization when Creditor's motion was initially heard based on a proposed surrender, the Vehicle remains unnecessary for the Debtor's effective reorganization based on the Debtor's admitted non-use.[1]

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[1]The Debtor states that he *might* use the Vehicle *if* he returns to trucking at some point in the *future*. However, the Debtor's future use is speculative and therefore insufficient to demonstrate necessity for a current reorganization. As the court stated in *In re Global Ship Sytems, LLC*, 391 B.R. 193, 208 (Bankr. S.D. Ga. 2007): "A reasonable probability cannot be grounded solely on speculation . . . and a mere financial pipe dream is insufficient to meet the requirements of § 362(d)(2)." *Id.* at 208 (internal quotations and citations omitted); *accord In re A Partners, LLC*, 344 B.R. 114, 126 (Bankr. E.D. Cal. 2006).

In short, the Debtor has failed to demonstrate a factual or legal error that warrants reconsideration (much less reversal) of the order granting Creditor's motion and terminating the automatic stay. At a very minimum, there was (and remains) a basis for relief from the automatic stay under § 362(d)(2). The court will therefore enter an order denying the Debtor's motion to reconsider.[2]

Creditor's request for a turnover order will also be denied. There may be some circumstances so egregious that warrant the court's intervention, such as when a debtor actively hides or conceals collateral that is also property of the estate. That is not the case here. Creditor is able to locate the Vehicle through the Vehicle's GPS system, and in fact has located it on more than one occasion. The proper remedy under the present circumstances is for Creditor to obtain an order terminating the stays (which it has done) and to proceed with recovery of the Vehicle under state law (which it is free to do). *See In re Johnson*, 2009 WL 1024582, *2 (Bankr. C.D. Ill. 2009).

That said, the Debtor's refusal to surrender the Vehicle when there is no basis for the Debtor (or anyone else) to retain it or the Debtor's or his attorney's active or knowing frustration of or interference with Creditor's efforts to recover the Vehicle may, in the totality of the circumstances, be viewed as bad faith conduct by both the Debtor and the Debtor's attorney as the Debtor's agent. It may also be conduct sanctionable under the court's inherent authority. Creditor may bring any such conduct before the court on seven days' notice.

Conclusion

For the foregoing reasons, the Debtor's motion to reconsider will be denied and Creditor's request for a turnover order will also be denied.

The motion to reconsider is ORDERED DENIED and the request for turnover is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a civil minute order.

[2]The Debtor's failure to clearly articulate grounds for relief and the basis of the relief requested are also fatal to the motion to reconsider for another reason. The automatic stay is terminated. The Ninth Circuit has held that, once terminated, the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *see also Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). There is some out-of-circuit authority which suggests the automatic stay may be revived if the order that caused it to terminate is vacated. *See State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996). However, the Debtor has not filed an adversary proceeding and he has not shown how (or why) *Gledhill* is applicable. In fact, inasmuch as the Debtor only asks the court to "reconsider" and "reverse" its prior order without any request to "vacate" the prior order it would appear that *Gledhill* is facially inapplicable.