UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 12, 2015 at 10:00 a.m.

1.	12-37302-B-13 JPJ-1	ERIC MCDOWELL Gary Ray Fraley	OBJECTION TO CLAIM OF UNITED STUDENT AID FUNDS/NAVIENT SOLUTIONS, INC., CLAIM NUMBER 6 6-8-15 [19]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Trustee's Objection to Allowance 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 Proof of Claim Number 6 of United Student Aid Funds/Navient Solutions Inc. and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of United Student Aid Funds/Navient Solutions Inc. ("Creditor"), Proof of Claim No. 6. The claim is asserted to be unsecured in the amount of $19,228.28. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Civ. P. 3002(c) and no request for extension of time was filed or approved by the court.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Objector asserts that the claim was untimely filed. The deadline for creditors (except a government unit) to file a proof of claim was January 30, 2013. Creditor filed its proof of claim on May 21, 2015, which was after the deadline.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

2.	15-24602-B-13 JPJ-1	RAFAEL/MARGARITA GUTIERREZ Julius M. Engel	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-15-15 [18]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on July 31, 2015. The confirmation hearing for the amended plan is scheduled for September 16, 2015. The earlier plan filed June 6, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

3.	13-20903-B-13 SJS-1	PAULA RAEDER Scott J. Sagaria	MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE, FOR SUBSTITUTION AND FOR WAIVER OF THE CERTIFICATION REQUIREMENTS FOR ENTRY OF DISCHARGE IN A CHAPTER 13 CASE 6-24-15 [21]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to substitute the surviving Debtor who is appointed representative of the estate, continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Blair Lynch gives notice of death of Co-Debtor Paula Raeder and requests the court substitute Mr. Lynch in place of the deceased for all purposes within this Chapter 13 proceeding.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on**

> **the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. 12-30406-B-13 MICHAEL/JULIENE ARNERICH — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 Jeffrey S. Ogilvie — 6-23-15 [40]

SETERUS, INC. VS.

Tentative Ruling: The Motion for Relief From Automatic Stay Under 11 U.S.C. § 362 (Real Property) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion for relief from stay.

Seterus, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 19644 First Street, Cottonwood, California (also known as 19674 First Street, Cottonwood, California) (the "Property"). Movant has provided the Declaration of Shannon Duron ("Duron Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Duron Declaration states that the property has no equity and that the Debtors have not tendered payments to Movant since February 2015.

Opposition has been filed by Jan Johnson ("Trustee") asserting that the Trustee has disbursed 38 post-petition payments to Movant totaling $48,893.94. This includes disbursements made from February 2015 through June 2015. To date, the only outstanding check from the Trustee that has not been cashed is the check that was disbursed on June 17, 2015. Furthermore, the Debtors have completed their plan payments. The Trustee filed a Notice to Debtors of Completed Plan Payments on June 11, 2015, and a Notice of Final Cure Payment on July 22, 2015.

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 does not exist for terminating the automatic stay as the Debtors have been diligent in carrying out their duties in the bankruptcy case. Moreover, they have completed plan payments.

The court shall not issue an order terminating and vacating the automatic stay.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

5.	15-24206-B-13 RJ-1	LEON DOBBINS Richard L. Jare	MOTION TO VALUE COLLATERAL OF CU FACTORY BUILT LENDING 7-21-15 [31]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtor having filed a Notice of Withdrawal of the Motion to Value Collateral of CU Factory Built Lending, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

6. 15-20407-B-13 RONALD/STACI LOVELAND — MOTION TO CONFIRM PLAN
CAH-1 C. Anthony Hughes — 6-4-15 [24]

DEBTOR DISMISSED:
06/05/2015
JOINT DEBTOR DISMISSED:
06/05/2015

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

7. 15-22108-B-13 PETER/SUSAN SCATENA — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
BB-1 Bonnie Baker — 6-9-15 [25]
Thru #8

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

8. 15-22108-B-13 PETER/SUSAN SCATENA — MOTION TO CONFIRM PLAN
BB-2 Bonnie Baker — 6-9-15 [31]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Motion to Confirm Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to continue to motion to August 19, 2015, at 10:00 a.m. to be heard after the motion to value collateral of Wells Fargo Bank, N.A., which will be heard by the Hon. Michael S. McManus on August 17, 2015 at 1:30 p.m.

Although no opposition has been filed by the Trustee or creditors, the plan's feasibility depends on the Debtors successfully prosecuting a motion to value the collateral of Wells Fargo Bank, N.A. in Item #7. This motion was filed, served, and continued to August 17, 2015 at 1:30 p.m. to be heard before the Hon. Michael S. McManus. Absent a successful motion, the Debtors cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

The court cannot yet determine whether the amended plan filed on June 9, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a). The motion will be continued to August 19, 2015, at 10:00 a.m.

The court shall enter an appropriate civil minute order consistent with this ruling.

9. 15-24908-B-13 STEVEN SWAUGER
CAH-1 C. Anthony Hughes
Thru #10

MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
6-24-15 [8]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to value the secured claim of Franchise Tax Board at $3,766.75.

The motion to value filed by Steven Swauger ("Debtor") to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by Debtor's declaration. Debtor has no real property interest, as indicated in Schedule A of the filed case. However, as shown in Schedule B of the filed case, Debtor has interests in a variety of assets. Debtor believes and asserts that the reasonable, fair market value of the net equity in all the assets listed in Schedule B is $3,912.97. As the owner, Debtor's opinion of value is some evidence of the assets' value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 2 filed on July 22, 2015, by Franchise Tax Board is the claim which may be the subject of the present motion.

Discussion

Debtor believes and asserts that the reasonable, fair market value of the net equity in all the assets listed in Schedule B is $3,912.97. Creditor's proof of claim filed July 22, 2015, indicates a claim amount of $3,766.75. Therefore, Creditor's secured claim is not under-collateralized. Creditor's claim is determined to be in the amount of $3,766.75. *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 court shall enter an appropriate civil minute order consistent with this ruling.

10. 15-24908-B-13 CAH-2 — STEVEN SWAUGER, C. Anthony Hughes — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE 6-24-15 [13]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to value the secured claim of Internal Revenue Service at $146.22.

The motion to value filed by Steven Swauger ("Debtor") to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor has no real property interest, as indicated in Schedule A of the filed case. However, as shown in Schedule B of the filed case, Debtor has interests in a variety of assets. Debtor believes and asserts that the reasonable, fair market value of the net equity in all the assets listed in Schedule B is $3,912.97. As the owner, Debtor's opinion of value is some evidence of the assets' value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set

> off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on July 22, 2015, by Internal Revenue Service is the claim which may be the subject of the present motion.

Discussion

Debtor believes and asserts that the reasonable, fair market value of the net equity in all the assets listed in Schedule B is $3,912.97. As noted in Item #9, Franchise Tax Board secures a claim with a balance of $3,766.75 and this interest is in priority to Creditor. Therefore, Creditor's secured claim of $120,386.73 is under-collateralized. Creditor's claim, secured by Debtor's personal assets listed in Schedule B is determined to be in the amount of $146.22. *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 court shall enter an appropriate civil minute order consistent with this ruling.

11. 15-23109-B-13 ALEX/JACKIE MARTIN — MOTION TO CONFIRM PLAN
CJY-1 Christian J. Younger — 6-2-15 [14]
Thru #12

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtors' Motion to Confirm First Amended Plan Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. Although opposition was filed by the Chapter 13 Trustee, the Trustee has withdrawn its opposition. No opposition to the motion has been filed by creditors. The amended plan filed on June 2, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. 15-23109-B-13 ALEX/JACKIE MARTIN — COUNTER MOTION TO CONDITIONALLY DISMISS CASE
CJY-1 Christian J. Younger — 7-27-15 [35]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Opposition to Debtors' Motion to Confirm First Amended Chapter 12 Plan, the counter motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. 15-24609-B-13 AMANDA DENTON
JPJ-1 Eric W. Vandermey

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

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The plan will take approximately 67 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The plan underestimates the amount owed to Santander Consumer USA in Class 2A at $24,700.00; however, the proof of claim shows $28,516.32 is owed.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

14.	10-35211-B-13 JPJ-1	GREG SEMMLER Scott D. Shumaker	OBJECTION TO CLAIM OF CITIMORTGAGE, INC., CLAIM NUMBER 9 6-25-15 [88]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Trustee's Objection to Allowance 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 Proof of Claim Number 9 of CitiMortgage Inc. and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of CitiMortgage Inc. ("Creditor"), Proof of Claim No. 9. The claim is asserted to be secured in the amount of $66,784.43. Objector asserts that the claim appears to be a duplicate of the claim filed by United Guaranty Residential Insurance Co. of NC, Proof of Claim No. 11, in the amount of $64,571.47 as both proofs of claim include the same documentation.

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

Proofs of Claim Nos. 9 and 11 include the same documentation. Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

15. 15-24112-B-13 TAMRA DELELLO
JPJ-1 Frederick H. Schill

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-16-15 [18]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor/s, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the meeting of creditors has been continued to August 13, 2015. The Trustee has not had the opportunity to perform a thorough examination of the Debtor under oath. The court will not confirm a plan prior to the continued § 341 meeting of creditors.

Second, the plan filed May 21, 2015, does not comply with 11 U.S.C. § 1325(a)(3) as the plan is not completed. Pages 5 and 6 of the plan contain blank signature lines for the Debtor and the Debtor's attorney.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

16. 15-23914-B-13 MICHAEL/SUSANNA ADEMA — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Timothy J. Walsh — 6-17-15 [16]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

The objection to confirmation was continued from July 8, 2015. Since that time, the Debtors and the Trustee have entered into a stipulation requesting the court to grant the Trustee's objection to confirmation of the plan filed May 14, 2015, deny confirmation, and allow the Debtors to file, set, and serve an amended plan. The court entered an order approving the stipulation on July 16, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. 15-24115-B-13 TERRICINA MIMS
BF-15 Ted A. Greene
Thru #18

OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION
7-16-15 [25]

Tentative Ruling: PHH Mortgage Corporation's Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor's plan does not cure the pre-petition arrears owed to PHH Mortgage Corporation ("Creditor") and does not provide for post-petition monthly payments pursuant to 11 U.S.C. § 1322(b). In addition, the Debtor's plan lists Creditor under Class 1 and provides an additional provision stating that the debt owed to Creditor will be satisfied once a short sale is complete. However, a short sale has not been approved by the court.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

18. 15-24115-B-13 TERRICINA MIMS
JPJ-1 Ted A. Greene

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-16-15 [22]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Nonetheless, there being an objection to confirmation by PHH Mortgage Corporation, the plan filed June 3, 2015, will not be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

19. 12-27320-B-13 RICHARD/SHERYLE KESTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
BEP-1 Richard D. Steffan — 7-2-15 [58]

CITY OF SACRAMENTO VS.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

City of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2041 Arliss Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of John Vanella ("Vanella Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Vanella Declaration states that the Property is a public nuisance that is a threat to the health, welfare, and safety of the public. The Property is in violation of numerous Dangerous Building (SCC Chapter 8.96) and Substandard Building (SCC Chapter 8.100), in particular: large roach infestation; large accumulations of garbage, junk, and debris inside the property; large accumulation of raw garbage and junk/debris strewn along the exterior portions of the property; non-permitted construction; inoperable/deteriorated plumbing fixtures; damaged Sheetrock; improper installation of electrical fixtures; improper/inoperable electrical fixtures; improper installation of washer/dryer; broken windows; extensive graffiti scrawled on the walls; broken flooring; and unsanitary conditions throughout the property. Accordingly, the City of Sacramento seeks to proceed with any and all actions necessary to abate the nuisance and recover any costs incurred whereby the action contemplated by the City falls within the "police or regulatory powers" exception.

Discussion

An exception under 11 U.S.C. § 362(b)(4) provides that a bankruptcy filing does not stay the actions of a governmental entity enforcing its police or regulatory power. One of the purposes of this exception is to protect public health and safety. *Midatlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection* 474 U.S. 494, 502 (1986). The exception allows for the enforcement of laws affecting health, welfare, morals, and safety despite the pendency of bankruptcy proceedings. *Lockyer v. Mirant Corp.* 398 F.3d 1098, 1107 (9th Cir. 2005). A suit comes within the "police or regulatory powers" exception if it passes either the "pecuniary purpose" test or the "public purpose" test. *Universal Life Church, Inc. v. United States (In re Universal Life Church),* 128 F.3d 1294, 1297 (9th Cir. 1997).

Here, the "public purpose" test is satisfied because the Property is a nuisance. Thus, lifting the stay is necessary to protect the health, safety, and welfare of the public.

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

There also being no objections from any party, the 14-day stay of enforcement under

Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. 10-42021-B-13 RONALD/KYM BEACH MOTION TO MODIFY PLAN
BSJ-2 Brandon Scott Johnston 6-26-15 [55]

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

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

First, the modified plan fails to specify a cure for the post-petition arrearage to BAC Home Loans including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Second, feasibility of the plan cannot be assessed without an updated budget regarding the changes to the Debtors' income and expenses.

Third, feasibility of the plan cannot be assessed since the terms are unclear with regard to the month in which the Debtors began paying the Trustee $2,310.00.

Fourth, feasibility of the plan cannot be assessed since the plan terms regarding the treatment of the ongoing mortgage payment of BAC Home Loans are unclear.

Fifth, the plan states that the unsecured creditors will receive a dividend of no less than 0.0%. However, to date the Trustee has disbursed a total of $18,895.49 to general unsecured creditors. Thus, the Debtors have not properly accounted for the Class 7 disbursements to general unsecured creditors.

Sixth, the plan payment of $2,310.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of this monthly amount plus Trustee's fees is $2,315.00, which exceeds the plan payment by $5.00. The plan filed June 26, 2015, does not comply with Section 4.02 of the mandatary form plan.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

21. 15-21721-B-13 ROBERT SAMUEL MOTION TO COMPEL ABANDONMENT
GW-1 Gerald B. Glazer 7-9-15 [22]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to grant the motion to compel abandonment.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Patricia Mericantante ("Movant"), ex-wife of Debtor, requests the court to order the Trustee to abandon property commonly known as 8652 Timber Court, Orangevale, California ("Property"). This Property is encumbered by the liens of Citi Mortgage, Inc. and Union Bank, securing claims of $299,617.17 and $50,000.00, respectively. The Declaration of Patricia Mericantante has been filed in support of the motion and values the Property to be $325,000.00.

The court finds that there is no equity in the Property, the Debtor is not claiming an interest in the subject property, the Debtor's Chapter 13 plan calls for a surrender of the Property, and the plan does not provide payment to either of the two lien holders. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Property abandoned to the Movant. The Debtor is authorized to transfer title to the property to Movant.

The court shall enter an appropriate civil minute order consistent with this ruling.

22. 11-47024-B-13 KATHERINE CRANE MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 6-25-15 [29]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court'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 filed on June 25, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. 14-20424-B-13 BRANDON/JACQUELINE HEATON MOTION TO MODIFY PLAN
EJS-1 Eric John Schwab 6-18-15 [39]

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

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

First, the modified plan does not specify a cure of the post-petition arrears to Bank of America including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Second, the modified plan does not specify a cure of the post-petition arrears to Residential Credit Solutions including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Third, feasibility of the plan cannot be properly assessed until the Internal Revenue Services proof of claim is further amended.

Fourth, the Debtors are delinquent to the Trustee in the amount of $15,261.00, which represents approximately 3 plan payments of $5,087.00 for May, June, and July 2015. The Debtors have not carried their burden of showing that the plan filed June 18, 2015, complies with 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

24. 12-31125-B-13 JOSEPH/JANE ROJAS MOTION TO MODIFY PLAN
LC-2 Lorraine W. Crozier 6-25-15 [36]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 25, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

25. 14-25625-B-13 DOUGLAS THURSTON
CK-10 Catherine King

MOTION TO AVOID LIEN OF SHEILA FOLEY GILDEA
6-16-15 [106]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

26. 15-23126-B-13 TAMARA MURRAY MOTION TO CONFIRM PLAN
MRL-2 Mikalah R. Liviakis 6-11-15 [27]
Thru #27

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

The court's decision is to not confirm the amended plan dated June 11, 2015.

The Debtor is delinquent to the Trustee in the amount of $715.00, which represents approximately 1 plan payment. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

27. 15-23126-B-13 TAMARA MURRAY COUNTER MOTION TO DISMISS CASE
MRL-2 Mikalah R. Liviakis 7-27-15 [34]

Tentative Ruling: The motion is conditionally denied.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

28. 15-24826-B-13 CLIFFORD/KATHLEEN GIANNUZZI — MOTION TO VALUE COLLATERAL OF PNC BANK
MET-1 — Mary Ellen Terranella — 6-29-15 [8]
Thru #29

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

The court's decision is continue this motion for the reasons stated in Item #29. To comply with Local Bankr. R. 3015-1(j), the confirmation hearing set for August 19, 2015, at 10:00 a.m. will also be continued to the same date.

The court shall enter an appropriate civil minute order consistent with this ruling.

29. 15-24826-B-13 CLIFFORD/KATHLEEN GIANNUZZI — MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
MET-2 — Mary Ellen Terranella — 6-29-15 [13]

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

The court's decision is to continue this motion to allow Travis Credit Union to obtain a appraisal.

The motion to value filed by Clifford Giannuzzi and Kathleen Giannuzzi ("Debtors") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 3351 Mix Canyon Road, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $602,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on June 26, 2015, by Travis Credit Union is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the value of the Property is $775,000.00 based on comparable sales of properties in the area and that such a valuation exceeds the first and second mortgages on the Property.

Discussion

Creditor shall have 30 days to obtain an appraisal of the Property. Debtors shall make the Property available to Creditor for an appraisal.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

30. 12-28631-B-13 KEVIN/INEZ SCOTT
PLC-11 Peter L. Cianchetta

MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTORS' ATTORNEY
6-24-15 [109]

Tentative Ruling: The Debtor's [sic] Counsel's Application and Declaration for Attorney Fees and Costs has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, only a brief summary of the work performed was included in the motion and declaration. Thus, the motion does not comply with Fed. R. Bankr. P. 2016(a).

Second, the motion erroneously states that no fees or costs have been previously ordered by this court. In the Order Confirming Plan filed on December 10, 2012 (Dkt. 51), the court stated that Debtors' counsel shall be paid pursuant to Local Bankr. R. 2016-1(c) and approved fees of $4,000.00. In order to seek additional compensation, Debtors' counsel must provide a detailed statement establishing the substantial and unanticipated post-confirmation work performed. Local Bankr. R. 2016-1(c)(3).

Accordingly, the motion for compensation is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

31. 15-23431-B-13 DAVID GARLAND
MMM-1 Mohammad M. Mokarram

MOTION TO APPROVE LOAN MODIFICATION
7-9-15 [19]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

The motion filed by David Garland ("Debtor") seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The proposed modification terms are as follows: the modified principal balance is $479,230.84, the modified mortgage is 383 months, the modified interest rate is 2.000%, and the modified principal and interest payment is $1,451.23 plus estimated escrow of $438.66 for a total of $1,889.89.

The motion is supported by the Declaration of David Garland. While the Declaration affirms Debtor's desire to obtain the post-petition financing and belief that it is in his best interest, it does not provide evidence of Debtor's ability to pay this claim on the modified terms. However, according to the Debtor's confirmed plan, the Debtor is currently required to pay Ocwen $1,889.00 per month

Therefore, this post-petition financing is consistent with the Chapter 13 Plan in this case. 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 court shall enter an appropriate civil minute order consistent with this ruling.

32. 15-20132-B-13 ANGELLITA DRAYTON — MOTION TO MODIFY PLAN
ADR-1 Justin K. Kuney — 6-26-15 [38]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 filed on June 26, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

33. 15-22932-B-13 SHARON WILDEE
JPJ-1 Peter G. Macaluso
Thru #34

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-14-15 [23]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Feasibility of the plan filed April 10, 2015, depends on the granting of a motion to value collateral for a 2010 Mazda. The motion to value collateral has been resolved by stipulation (see Item #34).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 10, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

34. 15-22932-B-13 SHARON WILDEE
PGM-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
5-11-15 [17]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to dismiss the motion to value collateral as moot.

The motion to value collateral was continued from June 10, 2015. Since that time, the Debtor and Americredit Financial Services, Inc. have entered into a stipulation to value the 2010 Mazda Mazda5, VIN ending in -85527, at $6,370.00 with an interest rate of 3% per annum and a monthly dividend of approximately $117.00 per month. The court entered an order approving the stipulation on June 25, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

35. 13-27034-B-13 NANCY LOPEZ — MOTION TO VACATE DISMISSAL OF CASE
SJS-4 Scott J. Sagaria — 7-27-15 [72]

DEBTOR DISMISSED: 07/03/2015

Tentative Ruling: The Debtor's Motion to Vacate Dismissal of Chapter 13 Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 vacate dismissal.

Federal Rule of Civil Procedure 60, incorporated here through Fed. R. Bankr. P. 7024 provides that the court can grant relief from an order for various reasons, including mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1).

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the Debtor's case. Specifically, upon receipt of the Chapter 13 Trustee's Notice of Default and Motion to Dismiss, the Debtor and Debtor's counsel conferred and drafted a second modified plan. However, Debtor's counsel erroneously calendared the deadline to file a motion as July 10, 2015, when the deadline was in fact June 26, 2015. Debtor's counsel asserts that this miscalculation shows mistake or excusable neglect and that the Debtor should not be forced to re-file a case which is confirmed and which default can be remedied with the filing of a motion to modify. Debtor further asserts that she is ready and willing to file within 1 week a modified plan and motion to confirm and set the motion and hearing on the court's first available calendar date.

DISCUSSION

The court finds that the Debtor's request is supported by both cause and excusable neglect. Cause exists based on the Debtor's compliance with and performance under her confirmed plan but for the date miscalculation by the Debtor's counsel. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. In fact, the case is nearly 2 years into its term, and it would be in the best interest of creditors and parties involved to vacate the dismissal. The Debtor is prepared to file a modified plan along with a motion to confirm the plan and set the motion for hearing.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court shall enter an appropriate civil minute order consistent with this ruling.

36. 12-29035-B-13 NICOLE BURKE — MOTION TO VALUE COLLATERAL OF
MMM-2 Mohammad M. Mokarram — JSL FUNDING GROUP
7-14-15 [41]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to value the secured claim of JSL Funding Group at $0.00.

The motion to value filed by Nicole Burke ("Debtor") to value the secured claim of JSL Funding Group ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 9650 Snowberry Way, Orangevale, California ("Property"). Debtor seeks to value the Property at a fair market value of $159,857.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 7 filed on September 4, 2012, by JSL Funding Group is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $234,001.00. Creditor's second deed of trust secures a claim with a balance of approximately $53,268.55. 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 court shall enter an appropriate civil minute order consistent with this ruling.

37.	15-24335-B-13 JPJ-1	BENJAMIN BARNES AND JENNIFER VARELA-BARNES C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-15-15 [17]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

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

The Debtors have not adequately explained the significant difference from their current monthly income listed on the original Form B22C-2 to that which was listed on the amended Form B22C-2. The Debtors shall provide the Trustee with pay advices for November 2014 through April 2015 to determine that the Debtors' income concurs with what was listed in the amended Form B22C-2.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

38. 14-24739-B-13 AERON WALLACE MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie 6-18-15 [23]
Thru #39

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

The court's decision is to permit the requested modification and confirm the modified plan, subject to the Trustee's confirmation that it has received the plan payment of $370.00.

The Trustee opposes modification of the plan on the ground that the Debtor is delinquent to the Trustee in the amount of $370.00, which represents approximately 1 plan payment. The Debtor asserts that it has paid this amount to the Trustee on August 4, 2015. If this is the case, the Debtor has carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Provided that the Trustee confirms that it has received the plan payment, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

39. 14-24739-B-13 AERON WALLACE MOTION TO VALUE COLLATERAL OF
SDB-2 W. Scott de Bie GOLDEN 1 CREDIT UNION
6-18-15 [30]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to value the secured claim of Golden 1 Credit Union at $11,117.00.

The motion to value filed by Aeron Wallace ("Debtor") to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Cadillac Escalade ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,117.00 as of the petition filing date. As the owner, the Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that

Proof of Claim No. 3 filed on June 4, 2014, by Golden 1 Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2005, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,405.60. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $11,117.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

40.	14-28940-B-13 JPJ-1 **Thru #41**	TERRANCE JR. AND BRIGETTE ZACHERY Susan B. Terrado	CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 6-15-15 [23]

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

The court's decision is to deny without prejudice the motion to convert or dismiss the case.

This motion is continued from July 1, 2015. The motion was filed by Jan Johnson ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be converted on the grounds that the Debtors are delinquent to the Trustee and the total value of non-exempt asset in the Debtors' estate is $6,650.00

Response by Debtors

On June 23, 2015, the Debtors filed a first modified plan and an Amended Schedule C, which fully exempts the $6,650.00 through use of the remaining "wild card" exemption. Thirty days have passed after the amendment was filed, and no interested party has filed an objection to the claimed exemption. As such, Debtors assert that $0.00 would be available for liquidation to benefit creditors, and a conversion to Chapter 7 would not be in the best interest of creditors or proper in this case. For the reasons stated in Item #41, cause also does not exist to dismiss this case. However, if the conditions in Item #41 are not satisfied, cause will exist and the court may dismiss this case.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause does not exist to convert this case pursuant to 11 U.S.C. § 1307(c). The motion is denied without prejudice and the case is not converted to one under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

41. 14-28940-B-13 SBT-1 — TERRANCE JR. AND BRIGETTE ZACHERY — Susan B. Terrado — MOTION TO MODIFY PLAN 6-23-15 [30]

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

The court's decision is to permit the requested modification and confirm the modified plan, provided that the following are satisfied:

First, that the Trustee confirms that Debtors' increase in plan payments for the period of July 2015 through July 2016 per the modified plan is sufficient to cure the post-petition arrearages to Wells Fargo Bank.

Second, that the Debtors' proposed order properly account for all payments made to date by the Debtors to the Trustee by stating the following: The Debtors have paid a total of $33,600.00 to the Trustee through June 2015. Commencing July 2015, plan payments shall be $6,375.00 for 12 months (through June 2016), then plan payments shall be $5,100.00 beginning July 2016 and continuing for the remaining life of the plan.

Provided that the aforementioned are satisfied, the modified plan filed June 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

42. 14-29641-B-13 ALEX TIMOFEYEV
JPJ-1 Mark Shmorgon

OBJECTION TO CLAIM OF CFS2, INC., CLAIM NUMBER 1-1
6-3-15 [19]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Trustee's Objection to Allowance 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 Proof of Claim Number 1-1 of CFS2, Inc. and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of CFS2, Inc. ("Creditor"), Proof of Claim No. 1-1. The claim is asserted to be unsecured in the amount of $4,424.64. Objector asserts that the statute of limitations for collection of the debt has expired.

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

Objector asserts that the statute of limitations for collection of this debt has expired. Documents attached to the proof of claim show that the last payment on the account was made on August 9, 2010, which is more than four years prior to the filing of the petition. The statute of limitations for commencing collection actions on debts of this type is four years pursuant to California Code of Civil Procedure § 337. Objector has, therefore, satisfied its burden of overcoming the presumptive validity of the claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

43. 15-24641-B-13 SONYA MANGABAY
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [17]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed June 8, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

44. 15-25141-B-13 FRED/SAUNDRA WILLIAMS — MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS
RAC-1 Richard A. Chan — 7-1-15 [10]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

The motion to value filed by Fred Williams and Saundra Williams ("Debtors") to value the secured claim of Real Time Resolutions ("Creditor") is accompanied by Debtors declaration. Debtors are the owners of the subject real property commonly known as 1324 Branwood Way, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $359,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

There is no evidence that Real Time Resolutions is the actual creditor or lienholder/beneficiary under the second deed of trust, which is the subject of this motion and the secured claim the Debtors ask the court to value. According to Schedule D, the lienholder under the second deed of trust is Nationwide Acceptance. Additionally, Nationwide Acceptance was not served as indicated in the Proof of Service (Dkt. 13).

The court shall enter an appropriate civil minute order consistent with this ruling.

45.	10-34642-B-13 CA-3 **Thru #46**	FRANK NIETO AND LORI MOORE-NIETO Michael David Croddy	MOTION TO AVOID LIEN OF MAGGIE BRINKOETTER 7-29-15 [117]

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Maggie Brinkoetter ("Creditor") against property of Frank Nieto and Lori Moore-Nieto ("Debtors") commonly known as 1509 Greenbrier Road, West Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,815.00. An abstract of judgment was recorded with Yolo County on June 11, 2009, which encumbers the Property. All other liens recorded against the Property total $345,258.93.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703 in the amount of $1.00 on Schedule C.

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

The court shall enter an appropriate court drafted order consistent with this ruling.

46.	10-34642-B-13 CA-4	FRANK NIETO AND LORI MOORE-NIETO Michael David Croddy	MOTION TO AVOID LIEN OF TOMMY JACK POIRIER 7-29-15 [122]

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Tommy Jack Poirier ("Creditor") against property of Frank Nieto and Lori Moore-Nieto ("Debtors") commonly known as 1509 Greenbrier Road, West Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,940.00. An abstract of judgment was recorded with Yolo County on February 3, 2010, which encumbers the Property. All other liens recorded against the Property, not including

the lien avoided in Item #45, total $343,318.93.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703 in the amount of $1.00 on Schedule C.

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

The court shall enter an appropriate court drafted order consistent with this ruling.

47. 13-35542-B-13 ANTHONY/RENEE TOKUNO MOTION TO MODIFY PLAN
DJC-3 Diana J. Cavanaugh 7-1-15 [49]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 1, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

48. 11-40343-B-13 ANGELA AJALA MOTION TO INCUR DEBT
WW-4 Mark A. Wolff 6-30-15 [56]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

The motion filed by Angela Ajala ("Debtor") seeks court approval to incur post-petition credit. Ocwen Loan Servicing ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment by approximately $200.00 per month. At the time this case was filed, Debtor owned her residence located at 9 Picket Court, Sacramento, California subject to a deed of trust of Indymac Bank. Indymac Bank was provided for in the plan to be paid as a Class 1 creditor because the account was in arrears at the time this case was filed. The proposed modification with Creditor will be as follows: new principal balance $247,378.31, commitment term of 240 months, monthly payment beginning August 1, 2015, at $932.59 (Dkt. 60, p. 3), interest rate of 2.000%, and forgiven principal of $45,028.31. Nonetheless, Debtor will continue paying the same plan payments; with the mortgage being reduced, there will be additional funds available to general unsecured creditors.

The motion is supported by the Declaration of Angela Ajala. 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 court shall enter an appropriate civil minute order consistent with this ruling.

49.	15-24043-B-13 JPJ-1 **Thru #50**	KRISTIANA LOPEZ Douglas B. Jacobs	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-16-15 [15]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor has not provided the Trustee with the requested Profit and Loss Statements from November 2014 through March 2015. As such, it cannot be determined whether the Debtor's business is solvent and necessary for organization. The Debtor has not complied with 11 U.S.C. § 521. Additionally, the Debtor has not provided the Trustee with documentation or 6 months of statements from December 2014 through May 2015 pertaining to 3 different bank accounts. Without these documents, feasibility of the plan cannot be fully assessed pursuant to 11 U.S.C. § 1325(a)(6).

Second, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

Third, the Debtor has not amended the Statement of Financial Affairs Questions 18 through 25 to properly account for her interest in Debtor's business. Additionally, the Debtor has not amended the petition or clarified the expenses relating to a rental in Hollywood, California.

Fourth, the Debtor has not amended the petition to disclose her interest in a 2009 Chevy Tahoe and has not amended the plan to properly account for the lien against this asset. Until this asset is properly accounted for, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor has not amended the Means Test to include the attachment for the business expenses deduction listed in Form 22C-2 and to properly account for all income the Debtor received during the 6-month period preceding the filing of the case.

Sixth, the Debtor does not appear to be putting forth her best efforts to repay her creditors as Debtor proposes monthly payments of $75.00 despite stating a monthly net income of $122.00. In addition, the Debtor has not amended the income listed on Schedule I after Debtor's Attorney stated at the meeting of creditors that the income listed may not be accurate. 11 U.S.C. §§ 1325(a)(6) and (3).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

50. 15-24043-B-13 KRISTIANA LOPEZ
MDE-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
7-16-15 [19]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor's proposed plan does not provide for curing of the default on the claim of Deutsche Bank National Trust Company pursuant to 11 U.S.C. § 1322(b)(5).

Second, the Debtor does not appear to be putting forth her best efforts to repay her creditors as Debtor proposes monthly payments of $75.00 despite stating a monthly net income of $122.00. 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

51. 10-37245-B-13 FF-2 — ERIC WORRELL AND AMY LEUGERS, Gary Ray Fraley — MOTION TO MODIFY PLAN 6-25-15 [43]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated June 25, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Trustee in the amount of $200.00, which represents the final plan payment that was due on or before June 25, 2015. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan understates the minimum dividend that will be paid to Class 7 unsecured claims at 28.6%. Prior to the filing of the modified plan, the Trustee has paid $31.32% to Class 7 unsecured claims. Under the modified plan, the Trustee will not be required to recover payments from unsecured creditors that were properly disbursed in accordance with the previously confirmed plan and timely filed and allowed claims.

Third, the final payment of $200.00 is insufficient to pay the secured claim of Bass and Associates. The modified plan adds Bass and Associates to Class 2 in the amount of $486.68 with an interest rate of 4.75%. Unless the Debtors pay $600.00 to the Trustee immediately, the modified plan exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

52.	14-26446-B-13 SJS-4	TODD/DENISE BEINGESSNER Scott J. Sagaria	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 9-1 6-9-15 [57]

Tentative Ruling: The Debtor's [sic] Objection to Claim 9-1 of LVNV Funding, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to overrule the objection to Proof of Claim Number 9 of LVNV Funding, LLC and not disallow the claim.

Todd Beingessner and Denise Beingessner ("Objectors"), request that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Proof of Claim No. 9. The claim is asserted to be unsecured in the amount of $156.13. Objector asserts that the statute of limitations for collection of the debt has expired.

In response, Creditor asserts that the Objectors failed to object to the claim within 60 days of the Notice of Filed Claims as required under Local Bankr. R. 3007-1(d)(3).

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Objections to claims shall be filed and served no later than 60 days after service of the Notice of Filed Claims. Local Bankr. R. 3007-1(d)(3).

The deadline to object to claims in this case was April 19, 2015. Objectors' objection to Creditor's proof of claim was filed on June 9, 2015, which was after the deadline. Objectors failed to timely file their objection as required pursuant to Local Bankr. R. 3007-1(d)(3).

Based on the evidence before the court, the Creditor's claim is not disallowed. The objection to the proof of claim is overruled.

The court shall enter an appropriate civil minute order consistent with this ruling.

53. 13-35347-B-13 ANGEL/KARINA GARCIA MOTION TO MODIFY PLAN
RJ-6 Richard L. Jare 6-15-15 [133]

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

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

First, there exists a discrepancy regarding what month the monthly ongoing mortgage payment shall resume.

Second, the Debtors' estimated tax refund of $5,000.00, which Debtors expect to receive by March 2016, cannot be considered a reliable source of income to supplement their monthly plan payments. As such, the Debtors do not appear to be able to fund the proposed plan payments of $1,863.00 that begins in March 2016.

Third, feasibility depends on the Debtors obtaining a loan modification with Bank of America. However, there is on evidence that the lender has consented to or is considering a loan modification.

Fourth, although the plan proposes to cure post-petition mortgage arrears to Bank of America in the amount of $2,553.50 by paying $78.00 per month for 28 months at 0.0% interest, the plan does not specify a cure for the total amount of post-petition mortgage arrears of $3,920.74 to Bank of America. Even if a cure is specified, the Debtors' current budget and expectation of using future tax refunds will not be sufficient to fund the increase in monthly dividend that would be necessary to pay the arrears in full. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(6).

Fifth, the Debtors are delinquent to the Trustee in the amount of $2,485.00, which represents approximately 2 plan payments. The Debtors have not carried their burden of showing that the plan filed June 15, 2015, complies with 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

54. 12-24455-B-13 BURNIE/CAROLYN ROW MOTION TO MODIFY PLAN
CA-2 Michael David Croddy 6-24-15 [40]

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

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

First, the Debtors have not shown their ability to make a lump sum payment from their lawsuit-personal injury accident that occurred in October 2012. The Debtors have not provided a detailed explanation of the status of the lawsuit, any settlement conferences, or if the matter has been set for trial. As such, the plan does not appear to be proposed in good faith as required under 11 U.S.C. §§ 1325(a)(3) and (a)(6).

Second, the modified plan does not properly account for all payments that the Debtors have paid to the Trustee to date, which is $12,441.00 through July 25, 2015.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

55. 15-25155-B-13 DOUGLAS/DENISE BRITT MOTION TO VALUE COLLATERAL OF
BLG-1 Pauldeep Bains HFC BENEFICIAL
Thru #56 7-1-15 [8]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to value the secured claim of HFC Beneficial at $0.00. This tentative is conditional upon a showing, at the time of the hearing, that Fed. R. Bankr. P. 7004(h) does not apply and that service by first-class mail as stated in the certificate of service, rather than by certified mail, is valid.

The motion to value filed by Douglas Britt and Denis Britt ("Debtors") to value the secured claim of HFC Beneficial ("Creditor") is accompanied by Debtors' declaration. Debtors the owners of the subject real property commonly known as 6204 Carlow Drive, Citrus Heights, California ("Property"). Debtors seek to value the Property at a fair market value of $167,991.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining 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 $213,689.44. Creditor's second deed of trust secures a claim with a balance of approximately $94,490.15. 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 conditionally granted as stated herein above.

The court shall enter an appropriate civil minute order consistent with this ruling.

56.	15-25155-B-13 BLG-2	DOUGLAS/DENISE BRITT Pauldeep Bains	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA HOME LOANS 7-1-15 [13]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

57.	13-20358-B-13 DNL-3	RONALD GRASSI AND MARISELA GUZMAN-GRASSI Peter L. Cianchetta	MOTION TO SPLIT/SEVER CHAPTER 13 CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7 7-15-15 [31]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Sever and Convert Case has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.

58. 14-24058-B-13 ANGELA FOGLEMAN MOTION TO SELL O.S.T.
EJS-1 Eric John Schwab 7-21-15 [18]
Thru #59

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

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

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Movant proposes to sell the property described as 3424 Marlee Way, Rocklin, California ("Property").

The proposed purchasers of the property are Ritu Sarin and Bhupesh Mittal ("Buyers"). Buyers have agreed upon a purchase price of $405,000.00. Upon completion of the sale, U.S. Bank (holder of the first mortgage) will release its lien on the Property.

As supported by the Declaration of Angela Fogelman, the Debtor intends that sufficient proceeds be turned over to the Chapter 13 Trustee to pay off her Chapter 13 case at 100% to all creditors, estimated to be $46,207.00. The Debtor intends that surplus proceeds will be used to purchase another home, pursuant to a separately filed motion. See Item #59.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall enter an appropriate civil minute order consistent with this ruling.

59. 14-24058-B-13 ANGELA FOGLEMAN MOTION TO INCUR DEBT O.S.T.
EJS-2 Eric John Schwab 7-21-15 [24]

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

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

The motion seeks permission to purchase a 11377 Torrey Pines Drive, Auburn, California ("Property"), the total purchase price of which is $336,000.00, with monthly payments of $1,000.00. Angela Fogleman ("Debtor") asserts that the purchase of the Property will not adversely affect the Debtor's creditors because the plan will have been paid off and the surplus sale proceeds will not be of further consequence to the bankruptcy estate. See Item #58.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

60.	15-23758-B-7 JPJ-2	SCOTT/KATHLEEN PHILLIPS Mikalah R. Liviakis	OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 7-8-15 [44]

CONVERTED TO CH. 7 ON 07/20/2015

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The debtor having voluntarily converted this case to one under chapter 7, the instant motion is **denied** as moot.

61. 11-23459-B-13 MONTGOMERY/DEBORAH CASEY
PPR-1 Mikalah R. Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
6-17-15 [49]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

U.S. Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3945 Balsam Street, Sacramento, California (the "Property"). Movant has provided the Declaration of Chastity Wilson ("Wilson Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that there are 52 post-petition defaults, with a total of $190,872.00 in post-petition payments past due. There are no pre-petition payments in default.

The Debtors listed the Property in their Statement of Financial Affairs as having been foreclosed upon in 2011. Sale was scheduled for February 1, 2011, but was postponed.

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).

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.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

62. 15-24359-B-13 LYNDA HORTON
AFL-1 Ashley R. Amerio
Thru #63

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
6-17-15 [10]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtor having filed a Notice of Withdrawal of the Motion to Value Secured Interest of Tax Lien Held by Internal Revenue Service, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

63. 15-24359-B-13 LYNDA HORTON
JPJ-1 Ashley R. Amerio

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [21]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed May 29, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

64. 15-23962-B-13 ZABEEN KHAN MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria 6-24-15 [25]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtor's Motion to Confirm First Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 filed on June 24, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

65. 11-36163-B-13 KYLE PURVIS MOTION TO MODIFY PLAN
JSO-10 Jeffrey S. Ogilvie 6-17-15 [137]

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

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

First, the Debtor's plan does not provide clear and concise plan payments and terms. As such, feasibility of the plan cannot be fully assessed or effectively administered.

Second, the modified plan states that the Debtor directly paid Wells Fargo Home Mortgage for months 44-46. Additionally, the Trustee's records reflect a post-petition arrearage of three installments to Wells Fargo Home Mortgage. Without proof from the Debtor, it cannot be determined whether Debtor cured the post-petition arrears.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

66. 11-33964-B-13 ENRIQUE GARCIA MOTION TO MODIFY PLAN
SDB-5 W. Scott de Bie 6-24-15 [75]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 filed on June 24, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

67. 14-32364-B-13 MICHAEL/PAULA RHOADES MOTION TO CONFIRM PLAN
PLC-4 Peter L. Cianchetta 6-11-15 [86]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

68.	14-29665-B-13 ULC-2	SCOTT BARBER Ronald W. Holland	OBJECTION TO CLAIM OF CERASTES, LLC, CLAIM NUMBER 5 6-1-15 [54]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtor's Objection to Claim No. 5 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 Proof of Claim Number 5 of Cerastes, LLC and disallow the claim in its entirety.

Scott Barber ("Objector"), requests that the court disallow the claim of Cerastes, LLC ("Creditor"), Proof of Claim No. 5. The claim is asserted to be unsecured in the amount of $5,597.25. Objector asserts that claim was discharged in a prior Chapter 7 bankruptcy case, Case No. 12-25120, filed in the Eastern District of California on March 16, 2012, and discharged on July 2, 2012. The Creditor's claim originated with Barclays Bank, which was listed in the prior Chapter 7 bankruptcy.

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

Objector asserts that the Creditor has not sufficiently described the assignment of the claim from Barclays Bank and that Creditor's proof of claim is not substantiated. Additionally, Objector asserts that the Creditor and its representative failed to inquire into the validity of the claim, purchased the claim for the purposes of collection after the claim was discharged in the prior bankruptcy, and knew or should have known that the claim had been discharged. The court finds that the claim was discharged in the prior bankruptcy and that the Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained. Although not raised by the parties, the court will sua sponte issue an order to show cause why Credit should not be held in contempt and sanctioned for filing a proof of claim on a debt discharged in the Debtor's prior bankruptcy case.

The court shall enter an appropriate civil minute order consistent with this ruling.

69. 15-25565-B-13 THOMAS/SHANNON SHUMATE MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott D. Hughes 7-13-15 [8]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

The court's decision is to grant the motion.

Thomas Shumate and Shannon Shumate ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on July 2, 2015, after Debtor failed to make plan payments (Case No. 14-28924, Dkt. 64 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtors assert that there is good cause for granting of the extension of the stay based on changed circumstances, overcoming the presumption of bad faith, and likelihood of success.

First, Debtors assert that their circumstances have changed because Mrs. Shumate has received a 3% raise in her salary and Mr. Shumate can now operate his landscape business after replacing a truck, trailer, and equipment that were stolen in April 2015. The Debtors assert that they could not fund the previous plan because Mr. Shumate could not generate income until the stolen property was replaced. With the current change in circumstances, Debtors believe that they can fund a new plan.

Second, Debtors assert that they filed the second case in good faith. Debtors state that they filed the second petition in order to stop a trustee's sale and did not want to wait until a trustee's sale had passed to file another case. Debtors also assert that they were unable to make plan payments in the previous case due to being robbed. The Debtors also note that they had successfully made plan payments for approximately 8 months in the previous case.

Third, the Debtors assert that they will successfully fund a new plan. In the previous case, the Debtors assert that they were unable to make plan payments because Mr. Shumate could not generate income until the stolen business property was replaced. Debtors state that by the time the business property was replaced, the plan payments

were in default and they did not have sufficient room in their budget to recover. Now that the business property has been replaced, the Debtors assert that they have a good and stable income to fund a new plan.

The Debtors have 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 court shall enter an appropriate civil minute order consistent with this ruling.

70. 13-29066-B-13 LEE OWENS
TRM-55 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-15 [75]

GW VACATION SUITES OWNERS ASSOCIATION, INC. VS.

WITHDRAWN BY STIPULATION

Final Ruling: No appearance at the August 12, 2015 hearing is required.

GW Vacation Suites Owners Association, Inc. ("Movant") having filed a Stipulation Re: Motion for Relief From the Automatic Stay, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

71. 15-24767-B-13 APN-1 **Thru #73**
SUE WILLIAMSON
Scott J. Sagaria
OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
7-7-15 [17]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 10/07/15 AT 10:00 A.M. BY STIPULATION OF PARTIES.

72. 15-24767-B-13 JPJ-1
SUE WILLIAMSON
Scott J. Sagaria
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [26]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to continue this motion to be heard on August 19, 2015, at 10:00 a.m. after the motions to value in Items 71 and 73 are heard on August 17, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

73. 15-24767-B-13 SJS-1
SUE WILLIAMSON
Scott J. Sagaria
MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
7-9-15 [22]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

74. 15-24470-B-13 DONNA VANDERHORST
JPJ-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [49]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

The Trustee's objections relate to the plan filed June 12, 2015. The Debtor has filed an amended plan on July 9, 2015. As such, the Trustee's objections are overruled as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

75. 15-24770-B-13 MICHAEL/MICHELLE BAYS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1 Scott J. Sagaria — 7-21-15 [41]
Thru #77

TRAVIS CREDIT UNION VS.

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

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

Travis Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Jayco T24Z, VIN ending in -0410 (the "Vehicle"). The moving party has provided the Declaration of Janet Prosser ("Prosser Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Prosser Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $465.00 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments in default, with a pre-petition arrearage of $775.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,304.76 excluding interest as stated in the Prosser Declaration, while the value of the Vehicle is determined to be $7,500.00, as stated in Schedules B and D filed by Debtor.

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 since the debtor and the estate have not made post-petition payments. 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Travis Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

76.	15-24770-B-13 SS-1	MICHAEL/MICHELLE BAYS Scott J. Sagaria	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 6-23-15 [13]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

77.	15-24770-B-13 SS-2	MICHAEL/MICHELLE BAYS Scott J. Sagaria	MOTION TO VALUE COLLATERAL OF TRAVIS FEDERAL CREDIT UNION 6-23-15 [18]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtors' Motion to Value Collateral of Travis Federal Credit Union on Debtors' 2007 Jayco Trailer T24Z has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The motion filed by Michael Bays and Michelle Bays ("Debtors") to value the secured claim of Travis Federal Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2007 Jayco Trailer T24Z ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,500.00 as of the petition filing date. As the owner, the Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a debt owed to Creditor with a balance of approximately $13,350.00. However, Debtors do not provide a date as to when the purchase-money loan was incurred. As such, the court cannot determine whether the loan was incurred more than 910 days prior to the filing of the petition. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

78. 14-20172-B-13 GREGORY BRUTUS MOTION TO MODIFY PLAN
WW-4 Mark A. Wolff 6-24-15 [125]

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

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

The Debtor is delinquent to the Trustee in the amount of $350.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

79.	12-26074-B-13 CA-2	CAROL DUGAR Michael David Croddy	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 6-29-15 [41]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

80. 15-20376-B-13 HARRY ROTH
HDR-1 Harry D. Roth
Thru #81

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2
6-8-15 [33]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

Cavalry SPV I, LLC's Proof of Claim No. 2 has been amended to $22.06, which reflects Debtor's payment of $314.44 credited toward the debt. Therefore, the Debtor's objection is overruled as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

81. 15-20376-B-13 HARRY ROTH
HDR-2 Harry D. Roth

OBJECTION TO CLAIM OF PACIFIC BELL TELEPHONE COMPANY, CLAIM NUMBER 7
6-8-15 [39]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Debtors' [sic] Objection to Claim No. 7 of Pacific Bell Telephone Company Filed on May 22, 2015, 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 Proof of Claim Number 7 of Pacific Bell Telephone Company and disallow the claim in its entirety.

Harry Roth ("Objector"), requests that the court disallow the claim of Pacific Bell Telephone Company ("Creditor"), Proof of Claim No. 7. The claim is asserted to be unsecured in the amount of $661.62. Objector asserts that Creditor continued to bill the Objector for telephone services that were canceled and that the Creditor's claim fails to provide an itemized statement of the charges.

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

Objector asserts that he switched phone services from Creditor to Comcast on February 28, 2013 (Dkt. 42, Exh. B). Nonetheless, Creditor failed to port three telephone numbers and continued to bill for the three lines after service had been switched to Comcast. As a result, Creditor purports charges through May 9, 2013 (Dkt. 42, Exh. A). The court finds that the Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

82.	11-43877-B-13 DF-6	VINCENT/SHELLY CAPERELLO David J. Fillerup	MOTION TO COMPEL AND/OR MOTION FOR COMPENSATION FOR DAVID FILLERUP, DEBTORS' ATTORNEY 7-13-15 [77]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 8/17/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

83. 13-35777-B-13 SIDNE ALLINGER
JPJ-1 Lucas B. Garcia

OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 13
6-8-15 [98]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Trustee's Objection to Allowance 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 Proof of Claim Number 13 of Ocwen Loan Servicing LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Ocwen Loan Servicing LLC ("Creditor") (and not Nationstar Mortgage, LLC), Proof of Claim No. 13. The claim is asserted to be secured in the amount of $257,469.81. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Civ. P. 3002(c) and no request for extension of time was filed or approved by the court.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Objector asserts that the claim was untimely filed. The deadline for creditors (except a government unit) to file a proof of claim was April 23, 2014. Creditor filed its proof of claim on April 10, 2015, which was after the deadline.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

84. 14-23177-B-13 JPJ-2 — GERALD YOUNG AND CARMEN HEINRICHS YOUNG — Diana J. Cavanaugh — CONTINUED MOTION TO MODIFY PLAN 5-21-15 [27]

WITHDRAWN BY STIPULATION

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Chapter 13 Trustee having filed a Stipulation of Debtors and Trustee for Non-Material Modification of Confirmed Chapter 13 Plan and Withdrawal of Trustee's Motion fo Post Confirmation Modification of the Chapter 13 Plan, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

85. 10-37279-B-13 MARK ROSE
JDP-2 Christian J. Younger

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
7-9-15 [37]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

The motion to value filed by Mark Rose ("Debtor") to value the secured claim of U.S. Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1342 White Hall Court, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $209,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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 second deed of trust claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $286,236.82. Creditor's second deed of trust secures a claim with a balance of approximately $72,455.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

86. 13-25079-B-13 MEGAN/ADAM ENOS MOTION TO MODIFY PLAN
MRL-5 Mikalah R. Liviakis 6-18-15 [94]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

The Motion to Confirm Debtors' Modified Chapter 13 Plan Dated June 15, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 18, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

87. 15-20583-B-13 ROBERT/DIANNA DANIEL MOTION TO MODIFY PLAN
BLG-2 Pauldeep Bains 6-26-15 [31]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on June 26, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan, provided that the following are satisfied:

First, that the Debtors' proposed order properly account that they have paid a total of $11,525.00 to the Trustee through the end of June 2015.

Second, that the Debtors' proposed order properly account for the post-petition arrearage to Select Portfolio Servicing at $2,010.49.

Third, that the plan specify monthly dividends for months 7 through 60 for the pre-petition arrearage to Select Portfolio Servicing in Class 1 at $238.36/mo, the post-petition arrearage to Select Portfolio in Class 1 at $73.11/mo, and Americredit Financial Services in Class 2A at $234.41/mo.

Provided that the aforementioned are satisfied, the modified plan filed June 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

88. 12-35084-B-13 ERLINDA SWANEGAN MOTION TO MODIFY PLAN
SJS-4 Scott J. Sagaria 6-24-15 [69]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 filed on June 24, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

89. 15-22784-B-13 JOSEPH/HEATHER ADKINS MOTION TO VALUE COLLATERAL OF
BB-1 Bonnie Baker TRI COUNTIES BANK
Thru #91 6-18-15 [38]

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

The court's decision is to value the secured claim of Tri Counties Bank at $3,743.77.

The motion to value filed by Joseph Adkins and Heather Adkins ("Debtors") to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtors' declaration. Debtor is the owners of the subject real property commonly known as 1940 Morning Star Way, Shasta Lake, California ("Property"). Debtors seek to value the Property at a fair market value of $75,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4 filed on May 11, 2015, by Tri Counties Bank is the claim which may be the subject of the present motion.

Opposition

Creditor opposes Debtors' valuation of the Property. Creditor asserts that the Property is worth at least $85,000.00 based on the independent appraisal of William R. Hendrix, a certified real estate appraiser. Additionally, Creditor provides a broker's opinion from Fantasy Pfanenstiel, a licensed California real estate broker, stating the value of the Property to be $95,000.00. Creditor further objects to Debtors' valuation

of the Property on the ground that values are not declining in the area, but are instead starting to increase.

Discussion

To the extent the Creditor objects to the Debtors' opinion of value, that objection is denied in part and sustained in part. Valuation cannot be based on Creditor's assertion that property values in the area are "starting to increase." Valuation is determined by the property's value at the time of filing the petition. However, the court does find evidence that the property's value is $85,000.00 based on the independent appraisal of William R. Hendrix.

The first deed of trust secures a claim with a balance of approximately $81,256.23. Creditor's second deed of trust secures a claim with a balance of approximately $25,917.50. Utilizing the valuation of the Property at $85,000.00, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $3,743.77, and therefore payments in the secured amount of the claim 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 Debtors' valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied and the Creditor's objection is sustained.

The court shall enter an appropriate civil minute order consistent with this ruling.

90. 15-22784-B-13 JOSEPH/HEATHER ADKINS — MOTION TO CONFIRM PLAN
BB-2 Bonnie Baker — 6-18-15 [44]

Tentative Ruling: The Motion to Confirm Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed as Item #91, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan for reasons stated in Item #91.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

91. 15-22784-B-13 JOSEPH/HEATHER ADKINS — OBJECTION TO CONFIRMATION OF PLAN BY TRI COUNTY BANK
BB-2 Bonnie Baker — 7-23-15 [52]

Tentative Ruling: The Secured Creditor, Tri County [sic] Bank's, Objection to Confirmation of Debtor's [sic] First Amended Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The plan's feasibility depends on the Debtors successfully prosecuting a motion to value the collateral of Tri Counties Bank (“Creditor”) in order to strip down or strip off its secured claim from its collateral. This motion was filed, served, and denied at Item #89. Absent a successful motion, the Debtors cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Given that the Debtors’ motion to value at Item #89 was denied and the Creditor’s objection to valuation sustained, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Therefore, the objection to confirmation is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

92. 15-24284-B-13 SHARLYN SWENDSEN
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
7-15-15 [25]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the duly noticed first meeting of creditors set for July 9, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $2,350.00. The total amount that will be paid to unsecured creditors is $0.00.

Third, the Debtor did not disclose her prior bankruptcy that was filed and dismissed on October 15, 2012 (Case No. 12-37291).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

93. 15-24484-B-13 JESSICA THOENE
JPJ-1 Bonnie Baker

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [14]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not provide proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the Debtor has not provided the Trustee with a copy of business items relating to Debtor's business Keller Williams Brokerage. It cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Third, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses for the Debtor's rental property.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

94. 14-20389-B-13 ROBERT/DONNA YOUNG — MOTION TO VACATE DISMISSAL OF CASE
SJS-1 Scott J. Sagaria — 7-27-15 [35]

DEBTOR DISMISSED:
07/03/2015
JOINT DEBTOR DISMISSED:
07/03/2015

Tentative Ruling: The Debtors' Motion to Vacate Dismissal of Chapter 13 Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 vacate dismissal.

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the Debtors' case. Specifically, upon receipt of the Chapter 13 Trustee's Notice of Default and Motion to Dismiss, the Debtors and Debtors' counsel conferred and drafted a second modified plan. However, Debtors' counsel erroneously calendared the deadline to file a motion as July 10, 2015, when the deadline was in fact June 26, 2015. Debtors' counsel asserts that this miscalculation clearly shows mistake or excusable neglect and that the Debtors should not be forced to re-file a case which is confirmed and which default can be remedied with the filing of a motion to modify. Debtors further assert that they are ready and willing to file within 1 week a modified plan and motion to confirm and set the motion and hearing on the court's first available calendar date.

DISCUSSION

The court finds that the Debtors' request is supported by both cause and excusable neglect. Cause exists based on the Debtors' compliance with and performance under their confirmed plan but for the date miscalculation by the Debtors' counsel. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtor's request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. In fact, the case is approximately 1.5 years into its term, and it would be in the best interest of creditors and parties involved to vacate the dismissal. The Debtors are prepared to file a modified plan along with a motion to confirm the plan and set the motion for hearing.

Given the unique circumstances of the Debtors, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court shall enter an appropriate civil minute order consistent with this ruling.

95. 15-24490-B-13 SPENCER GIBBER
JPJ-1 Matthew J. Gilbert

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [13]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

The Trustee's objections relate to the plan filed June 2, 2015. The Debtor has filed an amended plan on August 3, 2015. As such, the Trustee's objections are overruled as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

96.	14-21394-B-13 PP-2	PATRICK/SUZANNE CLARK W. Scott de Bie	CONTINUED MOTION TO APPROVE VALUATION AND TRANSFER OF STOCK PURSUANT TO CONFIRMED PLAN 6-10-15 [105]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

CONTINUED TO 9/09/15 AT 10:00 A.M.

97.	15-24295-B-13 JPJ-1	GREGORY/TRISHA LUND C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-16-15 [14]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors have not amended their Schedules and Form 22C to properly account for their total household income. It cannot be assessed whether the Debtors are putting forth their best efforts to repay their creditors through the plan filed May 28, 2015.

Second, the Debtors have not provided the Trustee with pay stubs for the 60-day period preceding filing of the case as required pursuant to 11 U.S.C. § 521.

Third, the Debtors have not provided the Trustee with a copy of the appraisal for their residence that is referenced in Schedule A of the petition. As such, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(4).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

98. 10-42297-B-13 AARON/KIRSTEN COLE MOTION TO MODIFY PLAN
PLG-3 Rabin J. Pournazarian 6-29-15 [68]

Final Ruling: No appearance at the August 12, 2015 hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 29, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.