UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 2, 2015 at 10:00 a.m.

1.	15-25402-B-13 JPJ-1	THEA ELVIN Mary Ellen Terranella	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-12-15 [21]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 matter to September 9, 2015, to be heard in conjunction with the Debtor's motion to value collateral.

Feasibility of the plan filed July 6, 2015, depends on the granting of a motion to value collateral for Wells Fargo Bank for the second deed of trust on the Debtor's residence. Although the Debtor has filed a motion to value the collateral, it is set for hearing on September 9, 2015.

The court shall issue a civil minute order consistent with this ruling.

2. 15-22005-B-13 RICHARD/TERESA BRACCO — MOTION TO VALUE COLLATERAL OF WESTERN TRITON, LLC
WW-3 Mark A. Wolff — 7-27-15 [36]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

The Motion to Value the Collateral Securing Claim of Western Triton LLC the Current Beneficiary of Note in Favor of National City Bank 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 Western Triton LLC at $0.00.

The motion to value filed by Debtors to value the secured claim of Western Triton LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 624 Lassen Way, Roseville, California ("Property"). Debtors seek to value the Property at a fair market value of $205,000.00 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

The first deed of trust secures a claim with a balance of approximately $215,567.00. Creditor's second deed of trust secures a claim with a balance of approximately $15,358.00. 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 issue a civil minute order consistent with this ruling.

3.	12-20606-B-13 JPJ-1	BOBBI EARLEY Timothy J. Walsh	OBJECTION TO CLAIM OF CITIMORTGAGE INC, CLAIM NUMBER 12 7-7-15 [46]

Final Ruling: No appearance at the September 2, 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 12 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. 12. The claim is asserted to be secured in the amount of $90,302.39. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. 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). 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 proof of claim was untimely filed. The non-governmental bar date was May 16, 2012. However, Creditor filed its proof of claim on December 12, 2012, and did not request an extension. 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 issue a civil minute order consistent with this ruling.

4. 14-27106-B-13 MICHAEL DEBERG MOTION TO MODIFY PLAN
PLG-3 Steven A. Alpert 7-15-15 [71]

Tentative Ruling: The Debtor's Motion to Modify Chapter 13 Plan (3rd Modified 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 not permit the requested modification and not confirm the modified plan.

First, although the Debtor's plan filed July 15, 2015, proposes a cure of the post-petition mortgage arrears for one month ($1,137.49), it does not propose a cure for the second missed payment of $1,137.49. The Trustee calculates that the monthly dividend of $68.22 for the remaining 49 months of the plan will in fact pay the post-petition mortgage arrears totaling $2,274.98, the plan does not correctly account for the payment of post-petition mortgage arrears and therefore does not comply with § 2.08(b) of the plan. Additionally, it is unclear when the Trustee is to commence making payments on the post-petition mortgage arrears, either July 2015 or May 2015..

Second, the plan does not properly account for all payments the Debtor has paid to the Trustee to date. The proper accounting is that the Debtor has paid a total of $15,350.40 to the Trustee through June 2015, and that commencing July 2015, monthly payments shall be $1,890.68 for the remainder of the plan.

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

The court shall issue a civil minute order consistent with this ruling.

5. 14-30112-B-13 ANTHONY/JANICE BECERRA MOTION TO MODIFY PLAN
AFL-5 Ashley R. Amerio 7-17-15 [90]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

The Motion to Confirm Second Modified Plan Dated July 17, 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 July 17, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a civil minute order consistent with this ruling.

6. 15-24115-B-13 TERRICINA MIMS MOTION TO SELL
TAG-1 Ted A. Greene 8-17-15 [37]

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 short sale.

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 short sale the property described as 10 Smokey Leaf Court, Sacramento, California.

The proposed purchaser of the property is Sum Investments Group, Inc. ("Buyer") with a cash settlement amount of approximately $172,000.00. The Debtor now seeks court approval as a preliminary measure to submitting the offer for approval to PHH Mortgage, which holds the first deed of trust, and thereby curing obligations to PHH Mortgage. The Debtor further asserts that PHH Mortgage will retain the right to consent or not to consent to the sale.

Additionally, the Debtor states that no net proceeds will be realized by the Debtor except for possible relocation assistance in the amount of $10,000.00 from the Home Affordable Foreclosure Alternatives program. The Debtor states it will file an amended Schedule C to exempt any relocation assistance award.

Debtor asserts that all creditors with liens and security interests encumbering the subject property not voluntarily released will be paid in full simultaneously with the transfer of title to the buyer or held by the escrow holder until agreement by the parties or further court order. Also all costs of sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds. Debtor states that it will not relinquish title to, or possession of, the subject property prior to payment in full of the purchase price. Debtor asserts that the sale is an arms-length transaction, and that the buyer is not related to Debtor.

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 issue a civil minute order consistent with this ruling.

7. 14-25916-B-13 JAY/ANGELA SAGARAL — MOTION FOR ALLOWANCE AND FUTURE PAYMENT ON UNTIMELY FILED CLAIM
SJS-3 Scott J. Sagaria — 8-18-15 [66]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtors' Motion for Order for Allowance and Future Payment on Untimely Filed Claim 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 deny the motion for order for allowance and future payment on an untimely claim and disallow the untimely claim filed as proof of Claim 18-1.

Debtors Jay and Angela Sagaral ("Debtors") seek court approval for the allowance of a late-filed proof of claim (Claim 18-1) in the amount of $2,223 which the Debtors filed on August 14, 2015, on behalf of the Internal Revenue Service ("Creditor"). The claim is a tax arising from a pre-petition retirement account withdraw based on the Creditor's reassessment of the Debtors' 2013 federal tax return. The claims bar date for all creditors (except a governmental unit) was October 1, 2014, and for a governmental unit was December 1, 2014. The Debtors had at the very latest until December 31, 2014, to file a proof of claim on Creditor's behalf if Creditor failed to file a claim. For the reasons explained below, the Debtor's motion is denied and the proof of claim filed on August 14, 2015, as Claim 18-1, is disallowed as untimely.

The Bankruptcy Code and Rules govern the requirements for the filing and allowance of proofs of claim. In a Chapter 13 case, the trustee may only make distributions "to creditors whose claims have been allowed." See Rule 3021.

To be allowed, the claim must first be filed under § 501. Section 501(a) provides that any creditor may file a proof of claim. Section 501(c) provides that "[i]f a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim." If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See § 502(a)(9).

In Chapter 13, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a). See Rule 3002(c). If a creditor fails to file a claim within the time periods prescribed, then the debtor (or trustee) may file a claim on the creditor's behalf within 30 days of the expiration of the creditor's bar date. See Rule 3004.

Rule 9006, in conjunction with Rule 3002(c), precludes the filing of an untimely proof of claim in Chapter 13 cases, except in very limited circumstances. The bankruptcy court's equitable power to enlarge the time for filing a proof of claim in a Chapter 13 case is very limited. See Gardenhire v. IRS (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000). The bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists. See Id. ("Our precedents support the conclusion that a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules.") (citing In re Osborne, 76 F.3d 306 (9th Cir. 1996), In re Tomlan, 907 F.2d 114 (9th Cir. 1990) and Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990)). None appear to apply in this case or, at a minimum, the Debtors have not shown that any of the six conditions in Rule 3002(c) apply.

The excusable neglect standard set forth in Rule 9006(b)(3) does not apply to permit the court to extend the time for filing a proof of claim under Rule 3002(c). In re

Coastal Alaska Lines, Inc., 920 F.2d at 1432–33. Therefore, under Rule 3002(c), a proof of claim must be disallowed if it is untimely and none of the six exceptions apply.

The proof of claim the Debtors filed on Creditor's behalf on August 14, 2015, is untimely. The court has no discretion in this Chapter 13 case to allow that late-filed proof of claim, and the Debtors have not demonstrated otherwise. Therefore, the Debtors' motion for allowance and payment of that late-filed claim is denied and Claim 18-1 is disallowed.

The court shall issue a civil minute order consistent with this ruling.

8. 15-21317-B-13 EDUARDO MORALES MOTION TO CONFIRM PLAN
MB-2 Michael Benavides 7-16-15 [61]

DISMISSED 8/19/2015

Final Ruling: No appearance at the September 2, 2015 hearing is required.

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

9. 15-25325-B-13 KRISTIN CRISTE
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [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)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

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

First, although the Debtor states that she is in the process of amending Statement of Financial Affairs #1 or #2 to list her income earned in 2013, 2014, and 2015 year-to-date, the Debtor has not yet done so pursuant to 11 U.S.C. § 521(a)(3).

Second, although the Debtor states that she is reviewing her business expenses, the Debtor has not yet provided the Trustee with a detailed list of these expenses in the amount of $1,200.00 as listed on Line 21 of Schedule J. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, feasibility of the plan depends on valuation of collateral for the Internal Revenue Service ("IRS"). Although the Debtor has not yet filed a motion to value the collateral, the Debtor has asserted that it does not need to file the motion since it has contacted the IRS concerning the claim amount. Otherwise, the Debtor states that it will file a motion to value collateral.

Fourth, the Debtor asserts that she has provided the Trustee with all required § 521 documents, which includes the pay stubs and bank statements for the time period of January 1, 2015, through January 23, 2015.

Nonetheless, for the first and second reasons stated above, 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 issue a civil minute order consistent with this ruling.

10. 15-24226-B-13 RACHEL DIAZ
SBT-1 Susan B. Terrado

MOTION TO CONFIRM PLAN
7-13-15 [19]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a civil minute order consistent with this ruling.

11. 14-31028-B-13 JUSTIN/MICHELE BROUSSARD — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FRANCIS JOHN OLIVETO
CAH-1 C. Anthony Hughes — 8-12-15 [45]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Approve Settlement Agreement with Creditor Francis John Oliveto (Claim #16) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Justin Broussard and Michelle Broussard ("Movants"), the Chapter 13 Debtors, request that the court approve a compromise and settle competing claims and defenses with Francis John Oliveto ("Creditor"). The claims and disputes to be resolved by the proposed settlement relate to a pre-petition wage claim by Joint-Debtor against her former employer. The Joint-Debtor and Creditor entered into a stipulation settling the wage claim in the following manner:

A. Creditor will settle Joint-Debtor's wage claim;

B. Creditor will withdraw Claim #16 and will not file a new or amended claim; and

C. A copy of the settlement agreement between the Joint-Debtor and the Creditor will be provided to the court upon the granting of the Ex Parte Application to Seal the settlement agreement that is confidential.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movants have not addressed the four factors outlined in *A & C Props* and *Woodson*. Additionally, a copy of the settlement agreement has not yet been provided to the court. Movants have asked the court to seal the settlement agreement on the basis it is "confidential." However, Movants have not explained how or why a wage claim settlement with a former employer is "confidential" within the meaning of 11 U.S.C. § 107 and Fed. R. Bankr. P. 9018. As such, the court cannot yet determine whether the compromise is

in the best interest of the creditors and the Estate or whether the settlement agreement satisfies the criteria for sealing. The motion is denied without prejudice.

The court shall issue a civil minute order consistent with this ruling.

12. 15-25328-B-13 MICHAEL/BERNADETTE AMBERS — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Lucas B. Garcia — 8-12-15 [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)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors and their counsel did not appear at the 341 Meeting of Creditors that was continued to August 20, 2015.

Second, the Debtors' attorney fees are not properly accounted for since there is a discrepancy in the fees listed in the plan to that listed in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

Third, the plan filed July 1, 2015, does not comply with 11 U.S.C. §§ 1325(a)(3) or (6) as the Debtors do not appear to be paying all of their disposable income into the plan. The Co-Debtor receives an annual bonus of approximately $2,500.00 to $5,000.00 gross. The Schedules and Plan do not include a provision for any future bonuses that the Debtors might receive during the life of the plan.

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 issue a civil minute order consistent with this ruling.

13. 13-27034-B-13 NANCY LOPEZ
SJS-5 Scott J. Sagaria

MOTION FOR ALLOWANCE AND FUTURE PAYMENT ON UNTIMELY FILED CLAIM
8-18-15 [81]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Debtor's Motion for Order for Allowance and Future Payment on Untimely Filed Claim 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 deny the motion for order for allowance and future payment on an untimely claim and disallow the untimely claim filed as Proof of Claim 9-1.

Debtor Nancy Lopez ("Debtor") seeks court approval for the allowance of a late-filed proof of claim (Claim 9-1) in the amount of $29,046.71, which the Debtor filed on August 18, 2015, on behalf of Wilshire Consumer Credit ("Creditor"). The claim relates to a debt on the Debtor's vehicle. The claims bar date for all creditors (except a governmental unit) was October 9, 2013, and for a governmental unit was November 19, 2013. The Debtor had at the very latest until November 9, 2013, to file a proof of claim on Creditor's behalf if Creditor failed to file a claim. For the reasons explained below, the Debtor's motion is denied and the proof of claim filed on August 18, 2015, as Claim 9-1 is disallowed in its entirety.

The Bankruptcy Code and Rules govern the requirements for the filing and allowance of proofs of claim. In a Chapter 13 case, the trustee may only make distributions "to creditors whose claims have been allowed." See Rule 3021.

To be allowed, the claim must first be filed under § 501. Section 501(a) provides that any creditor may file a proof of claim. Section 501(c) provides that "[i]f a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim." If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See § 502(a)(9).

In Chapter 13, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a). See Rule 3002(c). If a creditor fails to file a claim within the time periods prescribed, then the debtor (or trustee) may file a claim on the creditor's behalf within 30 days of the expiration of the creditor's bar date. See Rule 3004.

Rule 9006, in conjunction with Rule 3002(c), precludes the filing of an untimely proof of claim in Chapter 13 cases, except in very limited circumstances. The bankruptcy court's equitable power to enlarge the time for filing a proof of claim in a Chapter 13 case is very limited. See Gardenhire v. IRS (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000). The bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists. See Id. ("Our precedents support the conclusion that a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules.") (citing In re Osborne, 76 F.3d 306 (9th Cir. 1996), In re Tomlan, 907 F.2d 114 (9th Cir. 1990) and Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990)). None appear to apply in this case or, at a minimum, the Debtor has not demonstrated that any of the six exceptions apply.

The excusable neglect standard set forth in Rule 9006(b)(3) does not apply to permit the court to extend the time for filing a proof of claim under Rule 3002(c). In re Coastal Alaska Lines, Inc., 920 F.2d at 1432-33. Therefore, under Rule 3002(c), a

proof of claim must be disallowed if it is untimely and none of the six exceptions apply.

The proof of claim the Debtor filed on Creditor's behalf on August 18, 2015, is untimely. The court has no discretion in this Chapter 13 case to allow that late-filed proof of claim, and the Debtor has not demonstrated otherwise. Therefore, the Debtor's motion for allowance and payment of a late-filed claim is denied and Claim 9-1 is disallowed.

The court shall issue a civil minute order consistent with this ruling.

14.	15-24335-B-13 CAH-1	BENJAMIN BARNES AND JENNIFER VARELA-BARNES Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 7-31-15 [25]

Final Ruling: CONTINUED TO TUESDAY 9/08/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

15. 15-22236-B-13 ELAINE BROWN MOTION TO VACATE
KGH-1 Scott J. Sagaria 7-16-15 [38]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

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

The court's decision is to deny the motion to vacate.

Consumer Portfolio Services ("Creditor") moves to vacate the court's order entered on May 21, 2015, valuing the collateral that secures its claim – a 2006 Honda Civic LX - at $5,459.00 (Dkt. 31). The court will analyze Creditor's motion under Fed. R. Civ. P. 60(b) and 9024. For the reasons explained below, Creditor's motion will be denied.

Debtor's motion to value the Honda was filed on May 5, 2015 (Dkt. 22). Creditor was served with the motion, declaration, exhibits, and the notice of the hearing at the address listed in the matrix (Dkt. 25). Creditor does not allege any defect in service. Creditor did not oppose the Debtor's motion to value the Honda and did not appear at the hearing on that motion. That meant that the Debtor's declaration and opinion of value was the only evidence of value before the court when the motion was heard on May 20, 2015.[1] See Enewally v. Wash. Mut. Bank (In re Enewally), 386 F.3d 1165, 1173 (9th Cir. 2004).

The Debtor also filed a First Amended Plan and motion to confirm it on June 4, 2015 (Dkts. 32-36). The First Amended Plan classified CPS claim, secured by the Honda, as Class 2 secured claim and valued the Honda at $5,459.00. CPS did not oppose the motion to confirm or object to confirmation of the First Amended Plan. The motion, First Amended Plan, and notice of hearing were properly served on Creditor at the addresses listed in matrix. Creditor does not allege any defect in service. Creditor did not oppose the motion or object to confirmation of the First Amended plan. The motion to confirm the First Amended Plan was heard on July 21, 2015. Creditor did not appear at the confirmation hearing. There being no other objection, the First Amended Plan was confirmed on July 21, 2015 (Dkts. 40, 42). The order confirming the First Amended Plan was entered on August 4, 2015. (Dkt. 43).

On July 16, 2015, after the court granted the Debtor's motion to value and after the First Amended Plan which provided for Creditor's claim consistent with the order granting the motion to value was filed and served, Creditor filed a motion to vacate the order valuing the Honda at $5,459.00 (Dkt. 38). Creditor asserts it has a valid defense, namely, that based on the Kelly Blue Book, that actual value of the Honda is somewhere between $9,325.00 and $8,158.00. Creditor also challenges the Debtor's evidence, namely, that the Debtor's opinion as to value in her declaration is testimony by an interested party and therefore not probative.

[1] The Civil Minutes (Dkt. 29) and Civil Minute Order (Dkt. 31) appear to indicate that the hearing on the Debtor's motion to value was held on May 13, 2015. That is not correct. The court has reviewed its docket, including its tentative rulings that were posted at 2:18:10 p.m. on May 19, 2015, and has confirmed that the Debtor's motion to value was heard on May 20, 2015, at 10:00 a.m. as set and noticed.

Creditor has not demonstrated "excusable neglect" for relief under Fed. R. Civ. Pro. 60(b)(1) or "exceptional circumstances" for relief under Fed. R. Civ. Proc. 60(b)(6).[2]

Creditor offers no explanation for its failure, in the first instance, to oppose the Debtor's motion to value and/or object to confirmation of the First Amended Plan. Creditor has also not explained why it failed to appear at the hearing on the Debtor's motion to value which was set as an "(f)(2)" motion meaning under the court's local rules Creditor could have appeared and opposed the motion at the hearing or asked for a further briefing schedule in order to challenge the Debtor's evidence of value. Creditor has, therefore, not even attempted to demonstrate or establish "excusable neglect" or "exceptional circumstances."

Creditor's purported defense is also not meritorious. The order confirming the First Amended Plan was entered on August 4, 2015. Because Creditor did not object to confirmation of the First Amended Plan, confirmation of the First Amended Plan is now res judicata as to the value of the Honda included in that amended plan, i.e. $5,459.00. See Trulis v Barton, 107 F.3d 685, 691 (9th Cir. 1997); Heritage Hotel Partnership I, Ltd. v. Valley Bank of Nevada (In re Heritage Hotel Partnership), 160 B.R. 374, 377 (9th Cir. BAP 1993); In re California Liftfunding, 360 B.R. 310, 323-324 (Bankr. C.D. Cal. 2007). The plan now controls and the value in the plan is consistent with the court's valuation.

In short, Creditor has not demonstrated any basis for this court to vacate its order valuing the Honda at $5,459.00 and the First Amended Plan having been confirmed valuing the Honda at $5,459.00, that value of the Honda is now not subject to further dispute or litigation. Therefore, Creditor's motion to vacate is denied.

The court shall issue a civil minute order consistent with this ruling.

[2] None of the other provisions of Fed. R. Civ. Proc. 60(b) apply.

16. 15-20442-B-13 JAMES SISEMORE
CAH-1 Peter G. Macaluso
Thru #17

CONTINUED MOTION TO CONFIRM PLAN
7-7-15 [55]

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

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

First, 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 $81,418.75. The total amount that will be paid to unsecured creditors is only $70,858.23.

Second, the Debtor did not disclose his two prior bankruptcies (Case Nos. 10-23952 and 11-41808) in his petition.

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

Fourth, the Debtor is delinquent to the Trustee in the amount of $112.00, which represents approximately 0.04 plan payment. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the plan does not adequately provide for Internal Revenue Service's tax lien. Additionally, the Debtor failed to timely file 941 and 940 tax returns before the meeting of creditors, as required by 11 U.S.C. § 1308. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

This matter was continued from August 19, 2015, at 10:00 a.m. No new documents have been filed. The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue a civil minute order consistent with this ruling.

17. 15-20442-B-13 JAMES SISEMORE
JPJ-3 Peter G. Macaluso

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
7-1-15 [50]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 dismiss the case.

The Trustee moves for an order to covert or dismiss the case on the grounds that: (1) conversion to a Chapter 7 is in the best interest of creditors pursuant to 11 U.S.C. § 1307(c), (2) the Debtor has not taken further action to confirm a plan in the case and

thereby causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1), and (3) the Debtor is delinquent to the Trustee.

In addition, the Internal Revenue Service ("IRS") has stated its support to convert or dismiss the case (Dkt. 61).

RESPONSE BY DEBTOR

Debtor asserts that conversion to Chapter 7 is not in the best interest of creditors since the claim of IRS fully encumbers the non-exempt property of $81,418.75 listed in Schedule B. Debtor further asserts that because he anticipates the IRS will request this motion be continued in order to file an amended proof of claim and because the Trustee will not continue this motion, the Debtor requests that the current plan be dismissed rather than converted.

This matter was continued from August 19, 2015, at 10:00 a.m. No new documents have been filed. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a civil minute order consistent with this ruling.

18. 15-25642-B-13 ERNIE/ANGELA RODRIGUEZ — MOTION TO VALUE COLLATERAL OF ACCEPTANCE NOW
RJ-1 Richard L. Jare — 8-13-15 [16]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of Acceptance Now 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 value the secured claim of Acceptance Now ("Creditor") at $900.00.

The motion filed by Debtors to value the secured claim of Acceptance Now ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a couch and dining set (cumulatively, "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $900.00 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

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

The total dollar amount of the obligation represented by the financing agreement with Acceptance Now is stated in the Debtors' declaration as being $2,379.00. Debtors assert that the Personal Property has been used for several years in a home with two dogs and that the price a retail merchant would charge for the Personal Property is $900.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $900.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a civil minute order consistent with this ruling.

19. 14-32247-B-13 ROBERT/PAULINE COBBLER — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
JSO-3 Jeffrey S. Ogilvie — 8-3-15 [44]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

The Objection to Notice of Mortgage Payment Change Filed July 10, 2015, has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection.

Debtors object to the Notice of Mortgage Payment Change filed by U.S. Bank, N.A. ("Creditor"). Creditor seeks a mortgage payment increase from $932.27 to $2,605.80 beginning August 2, 2015, for minimum payment calculation based on balance and days in billing cycle. Debtors assert that they have not seen any documentation to support the Creditor's demand amount. Additionally, Creditor's prior five Notices of Mortgage Payment Change ranged between $920.62 to $932.27, and Creditor's Proof of Claim No. 9 does not reflect any drastic mortgage change.

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

The court has reviewed the Notice of Mortgage Payment Change filed July 10, 2015, the prior five Notices, and Proof of Claim No. 9 filed by Creditor. The court finds no evidence or explanation as to how the Creditor computed its minimum payment calculation based on balance and days in billing cycle. Additionally, the Creditor provides no response to the Debtor's objection.

Based on the evidence before the court, the Objection to the notice of mortgage payment change is sustained, Creditor's notice of payment change is stricken, that payments made to Creditor be reduced to their former amounts prior to the Notice of Payment Change, and that any excess in payments that have been paid to Creditor be returned to the Trustee.

The court shall issue a civil minute order consistent with this ruling.

20.	14-30652-B-13 JPJ-1	DEAN MISAJON Seth L. Hanson	OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 5 7-2-15 [27]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

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

The court's decision is to sustain the objection to Proof of Claim Number 5-2 of Atlas Acquisitions, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Atlas Acquisitions, LLC ("Creditor"), Proof of Claim No. 5-2. The claim is asserted to be unsecured in the amount of $314.98. Objector asserts that the documents attached to the proof of claim show that the last payment on the account was made on August 31, 2010, which is more than 4 years prior to the filing of the petition and that the Statute of Limitations for collection of this 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 Statute of Limitations has expired. The Statute of Limitations for commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). The collection for the Creditor's debt has expired. 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 issue a civil minute order consistent with this ruling.

21. 15-24152-B-13 DAVID SCHECTER MOTION TO CONFIRM PLAN
EJS-1 Eric John Schwab 7-27-15 [46]

Tentative Ruling: The Motion to Confirm Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition 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 July 27, 2015.

Although the Debtor asserts that it has provided the Trustee with copies of his 2011, 2013, and 2014 federal and state tax returns pursuant to 11 U.S.C. § 1308, the Debtor has not been examined under oath pursuant to 11 U.S.C. § 343 since the Debtor and his attorney did not appear at the continued meeting of creditors held on August 20, 2015.

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

The court shall issue a civil minute order consistent with this ruling.

22. 15-25452-B-13 PHILLIP JOHNSTON
JPJ-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [16]

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

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

The meeting of creditors has been continued to September 17, 2015. There has been no thorough examination of the Debtor under oath pursuant to 11 U.S.C. § 343.

In response, the Debtor requests that the Objection be sustained and the accepts the conditional order.

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 issue a civil minute order consistent with this ruling.

23. 15-25453-B-13 REX GARDNER
JPJ-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [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)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Feasibility of the plan depends on the granting of a motion to value collateral for Bank of America, N.A. for the second deed of trust on the Debtor's residence. To date, the Debtor has not filed, set for hearing and served the respondent creditor and the Trustee with a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

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 issue a civil minute order consistent with this ruling.

24. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN MOTION FOR ADMINISTRATIVE EXPENSES
KMD-2 Mark Shmorgon
Thru #25 7-3-15 [65]

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

The court's decision is to grant the motion.

Hunt Construction Co. ("Creditor") entered into a commercial lease with Mikhail Varkentin and Yuliya Varkentin ("Debtors") for real property commonly known as 5701 88th Street, Unit B, Sacramento, California ("Premises"). Creditor asserts that rent accrued post-petition and prior to the rejection of the subject lease for a period of more than one month. During that time, Creditor asserts that the Premises were occupied by property belonging to the estate including, but not limited to, motor vehicles and business records of the Debtors. Creditor asserts that the Co-Debtor continues to actively operate his business out of the Premises and that the Debtors' sole source of income for plan payments is derived from that business. As such, Creditor requests administrative expenses in the amount of $15,955.68 through July 3, 2015, plus $153.42/day until possession is restored to Creditor. Through September 1, 2015, the court calculates the amount of the allowed administrative claim at $25,160.88, which is $153.42 x 60 days or $9,205.20.

Creditor offers the Declaration of Herb Leiverett in support of its motion. The Declaration and supporting documents were filed on August 25, 2015, and separate from the motion. The court's docket reflects that the Creditor did not serve these documents on the Debtors; however, the certificate of service filed July 6, 2015, indicates a declaration and exhibit were served on July 3, 2015. Creditor shall confirm service at the time of hearing if the documents filed August 25, 2015, were served on July 6, 2015.

11 U.S.C. § 503(b)(1)(A) prescribes that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1)(A) the actual, necessary costs and expenses of preserving the estate."

The court finds that the administrative expenses were an actual and necessary cost of preserving the estate. Mr. Varkentin provides the sole source of income as stated in Schedule I of the petition (Dkt. 8) through his operation of the auto mechanic business out of the Premises. Additionally, Creditor has submitted a copy of the lease agreement it entered into with Mr. Varkentin (Dkt. 92). Without contrary evidence from the Debtors, the court finds that the Debtors' plan payments were and are derived from Mr. Varkentin's continual operation of the auto mechanic business out of the Premises. As such, the Creditor has provided value to the estate in the form of Mr. Varkentin's occupancy of the Premises and that this occupancy resulted in costs and expenses incurred by the Creditor.

Based on the foregoing, Creditor is allowed an administrative claim of $25,160.88, plus $153.42 per day until the lease is rejected.

The court shall issue a civil minute order consistent with this ruling.

25. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN — CONTINUED MOTION TO CONFIRM PLAN
MS-4 Mark Shmorgon — 6-16-15 [49]

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

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

First, the Debtors are delinquent to the Trustee in the amount of $207.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan filed June 16, 2015, complies with 11 U.S.C. § 1325(a)(6).

Second, the objection with regard to feasibility of the plan being dependent upon the granting of a motion to avoid lien of Hunt Construction for a Toyota Prius is no longer at issue. The motion to avoid lien was granted ON August 20, 2015.

Third, the court having now allowed an administrative rent claim in the amount of $25,160.88, the Debtors must account for this administrative claim in their plan. The plan filed June 16, 2015, proposes to pay $109.00 per month for administrative claims. The Debtors have not demonstrated this plan and payment are feasible in light of the allowed administrative claim.

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

The court shall issue a civil minute order consistent with this ruling.

26.	07-29855-B-13 14-2213 SIMPSON ET AL V. CHASE BANK, N.A.	GWENDOLYN/HORACE SIMPSON PGM-12	MOTION FOR COMPENSATION FOR PETER G. MACALUSO, PLAINTIFFS ATTORNEY(S) 7-28-15 [49]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

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

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

FEES AND COSTS REQUESTED

Plaintiffs Gwendolyn and Horace Simpson request the allowance of $3,870.00 in fees and $246.00 in expenses, for a total of $4,116.00. The request for attorney's fees and costs relate to the court's entry of a default judgment and award of attorney's fees against Chase Bank, N.A. on July 7, 2015 (Dkt. 47).

Plaintiffs are allowed, and Chase Bank, N.A. is required to pay, the following amounts to the Plaintiffs in this case:

Fees	$3,870.00
Costs and Expenses	$ 246.00

The court shall issue a civil minute order consistent with this ruling.

27. 15-25157-B-13 ANDRES/CARMEN PEREZ — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
JPJ-1 Pauldeep Bains — 8-11-15 [16]

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

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

First, the Debtors have not provided the Trustee with the Domestic Support Obligation Checklist. Pursuant to Local Bankr. R. 3015-1(c)(3), the Debtors are required to serve upon the Trustee no later than 14 days after the filing of the petition the checklist. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Second, the Debtors have not filed an amended budget to correct an over-deduction and properly account for the Debtor's monthly net income. Schedule I of the petition filed June 26, 2015, lists both "Alimony" and "Miscellaneous" amounts, which may actually be one and the same deduction. The plan does not comply with 11 U.S.C. §§ 1325(a)(3) or (6) as the Debtors do not appear to be paying all of their disposable income into the plan.

Third, the Debtors have filed an amended petition on August 12, 2015, to disclose the previous bankruptcy case filed (case no. 09-41683).

For the first and second reasons stated above, 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 issue a civil minute order consistent with this ruling.

28. 15-23962-B-13 ZABEEN KHAN
PD-1 Scott J. Sagaria

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-15 [32]

FIRST TECH FEDERAL CREDIT UNION VS.

Final Ruling: No appearance at the September 2, 2015, hearing is required.

The Motion for Relief From the 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 form stay.

First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Nissan Murano, VIN ending in -69660 (the "Vehicle"). The moving party has provided the Declaration of Anna Fowler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Fowler Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $1,499.37 in post-petition payments past due.

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 $23,111.83, as stated in the Fowler Declaration, while the value of the Vehicle is determined to be $15,484.00, as stated in Schedules B and D filed by Debtor (although the Movant values the Vehicle at $13,100.00).

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 First Tech Federal 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 issue a civil minute order consistent with this ruling.

29. 15-20066-B-13 CLORIA SMITH MOTION TO MODIFY PLAN
CJY-1 Christian J. Younger 7-27-15 [22]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

The Debtor's Motion to Confirm First 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 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 July 27, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a civil minute order consistent with this ruling.

30. 15-24470-B-13 DONNA VANDERHORST
BHT-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
8-6-15 [58]

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

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 Deutsche Bank National Trust Company's objection, the Debtor filed an amended plan on August 8, 2015. The confirmation hearing for the amended plan is scheduled for October 7, 2015, at 10:00 a.m. The earlier plan filed July 9, 2015, is not confirmed.

The court shall issue a civil minute order consistent with this ruling.

31.	12-22572-B-13 JPJ-2	AMIR/MARYAM RANGCHI Gerald B. Glazer	OBJECTION TO CLAIM OF CITIMORTGAGE INC, CLAIM NUMBER 14 7-7-15 [43]

Final Ruling: No appearance at the September 2, 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 14 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. 14. The claim is asserted to be secured in the amount of $31,985.41. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. 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). 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 proof of claim was untimely filed. The non-governmental bar date was June 13, 2012. However, Creditor filed its proof of claim on July 16, 2012, and did not request an extension. 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 issue a civil minute order consistent with this ruling.

32. 15-25472-B-13 KAREN LEON
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [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)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

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

First, the Debtor has not amended the Statement of Financial Affairs to disclose the 401k loan and an insurance claim for losses prior to the filing of the case. Until such an amendment is filed, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. §§ 1325(a)(3) or (4).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(3) as the Debtor does not appear to be putting forth her best efforts to repay her creditors by paying all of her disposable income into her plan. According to the Debtor's 2014 tax returns, the Debtor received a refund in the amount of $3,562.00, or approximately a withholding of $296.83 per month. However, the Debtor's Schedules and plan do not include a provision for the treatment of the funds that the Debtor may receive during the life of the plan as a result of these over-withholdings.

In response, the Debtor requests that the Objection be sustained and the accepts the conditional order.

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 issue a civil minute order consistent with this ruling.

33. 15-25373-B-13 LISA ILAGA
APN-1 Mikalah R. Liviakis
Thru #34
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-3-15 [24]

CONTINUED TO TUESDAY 9/08/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

34. 15-25373-B-13 LISA ILAGA
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [32]

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

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

First, the meeting of creditors was continued to September 3, 2015, because the Debtor did not appear at the duly noticed first meeting of creditors. The Debtor must be examined under oath pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided the Trustee with copies of the Debtor's pay stubs, profit and loss statements for the non-filing spouse's business, and bank statements from January through June 2015. As such, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. §§ 1325(a)(3)(4) or (6), as well as § 1325(b)(1)(B).

Third, the Debtor's Schedules and Plan do not provide for treatment of the additional disposable income from her 2014 tax refund totaling $6,053.00, or approximately $504.41 per month in over-withheld taxes. The plan does not comply with 11 U.S.C. § 1325(a)(6) as the Debtor does not appear to be putting forth her best efforts to pay all of her disposable income into the plan.

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 issue a civil minute order consistent with this ruling.

35. 15-23677-B-13 FRANK SCRUGGS MOTION TO CONFIRM PLAN
CYB-1 Candace Y. Brooks 7-16-15 [30]

Final Ruling: No appearance at the September 2, 2015, hearing is required.

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

There being no objection to confirmation, the plan filed July 16, 2015, will be confirmed.

The court shall issue a civil minute order consistent with this ruling.

36. 14-29780-B-13 CALVIN/SHARON BUFFO MOTION TO MODIFY PLAN
BB-3 Bonnie Baker 7-20-15 [65]

Tentative Ruling: The Motion to Confirm 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 permit the requested modification and confirm the modified plan, provided that the order properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $7,674.00 to the Trustee through July 25, 2015. Commencing August 25, 2015, monthly plan payments shall be $330.00 for the remainder of the plan.

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

The court shall issue a civil minute order consistent with this ruling.

37. 15-26284-B-13 MORTISHIA FAIRCHILD MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella 8-9-15 [8]

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

The court's decision is to grant the motion.

Mortishia Fairchild ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on July 21, 2015, due to the Debtor's delinquence on plan payments (Case No. 13-36128, Dkt. 48). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that she fell behind in her plan payments in the previous case because a tenant on her property stopped paying rent. The Debtor's property includes three structures, two of which she rents out. The tenant who stopped making payments brought additional tenants onto the property without the Debtor's consent, damaged the property by cutting holes in walls, broke a locked, metal gate on the driveway, and threatened the Debtor. As a result, the Debtor hired an attorney to evict the tenants and pursue an unlawful detainer action, which was heard in Solano County Superior Court on August 11, 2015.

The Debtor states that she is currently obtaining rent from a boarder and her grandson, and states that this income will allow her to make plan payments. Additionally, the Debtor asserts that she has new tenants who are ready to move into the structure in question after the current tenant is evicted and the structure is repaired.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court shall issue a civil minute order consistent with this ruling.

38. 15-24986-B-13 KATHERINE SLIGHTAM — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
JPJ-1 Pro Se — 8-11-15 [21]

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

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

First, the Debtor is delinquent to the Trustee in the amount of $1,012.35, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,012.35 will also be due. The Debtor has not shown that the plan filed July 6, 2015, complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor did not appear at the duly noticed first meeting of creditors set for August 6, 2015, as required pursuant to 11 U.S.C. § 343.

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

Fourth, the Debtor has not provided the Trustee with a copy of income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(3)(2)(A)(1).

Fifth, the Debtor has not provided the Trustee with copies of certain items including, but not limited to, a completed business examination checklist of Market Alternatives, Inc., income tax returns for the last 2-year period prior to the filing of the petition, proof of all required insurance and proof of required licenses or permits. The Debtor has not complied with 11 U.S.C. § 521.

Sixth, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Seventh, the Debtor's monthly net income is negative but the Debtor proposes plan payments that are $1,012.35 The Debtor has not demonstrated her ability to fund the proposed plan payments. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Eighth, the plan proposes an impermissible modification of the secured claim of Ocwen Loan Servicing, the holder of the first deed of trust on the Debtor's principal residence. The plan does not propose to treat the pre-petition mortgage arrears totaling $52,293.62. There is no evidence that the lender has consented to or is considering a loan modification.

Ninth, due to the fact that the plan does not propose to pay the pre-petition mortgage arrears of Ocwen Loan Servicing in full over the life of the plan, the plan filed July 6, 2015, will take approximately 603 months to complete, which exceeds the 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).

Tenth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because 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 $6,155.00. The total amount that will be paid to unsecured creditors is $0.00.

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 issue a civil minute order consistent with this ruling.

39.	15-25387-B-13 JPJ-1	KENNETH/CHRISTEL SEIVERTSON Thomas L. Amberg	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-13-15 [16]

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

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

First, the Co-Debtor's gross monthly income listed on Line 2 of the Means Test is $199.99 per month less than the income that is reflect on Co-Debtor's pay stubs received between January 1, 2015, and June 30, 2015. Thus, the plan filed July 6, 2015, does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Co-Debtor's gross income appears to be understated.

Second, the Debtors' household size appears to be overstated on the Means Test. Line 5 of the Means Test indicates a household size of 4, but Debtors stated at the § 341 meeting of creditors that their household size is 3 due to one adult child moving away to attend college. Based on this testimony, that the Debtors have overstated of their deductions and expenses on the Means Test that are based on household size.

Third, the Debtors' monthly disposable income should be $49,220.40. The plan will pay only $13,459.75.

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 issue a civil minute order consistent with this ruling.

40. 15-20391-B-13 ESMERELDA WYMORE
JPJ-2 Brunella M. Palomino

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
7-28-15 [59]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 not convert this Chapter 13 case to a Chapter 7.

This Motion to convert the Chapter 13 bankruptcy case has been filed by Jan Johnson ("Movant"), Chapter 13 Trustee. Movant asserts that the case should be converted based on the following grounds.

First, Movant seeks dismissal of the case on the basis that Debtor is $1,395.00 delinquent in plan payments, which represents approximately 3/4 of one plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, Movant asserts that the Debtor's non-exempt property in the estate is $40,008.33, which consists primarily of equity in rental property located at 335 Du Bois Ave., Sacramento, California. With this non-exempt property, the Trustee asserts that a conversion to a Chapter 7 proceeding is in the best interest of creditors.

Response by Debtor

Debtor states that she is now current on plan payments. The Debtor asserts that she experienced a major medical emergency where she was hospitalized immediately prior to the step-up payments in her plan. Because of this emergency the Debtor was unable to work full-time and could not afford the step-up payments. As a result, the Debtor claimed disability insurance, which supplemented her work income. Upon receiving the disability insurance funds, Debtor states that she immediately made a payment of $3,270.00 to the Trustee and brought her plan current through August 2015. Debtor further asserts that her health problems have subsided, that she is able to work full-time, and that it is unlikely she will miss plan payments in the future.

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) since the Debtor is now current on plan payments. Additionally, because the court finds it unlikely that the Debtor will fall behind on future plan payments given that her health problems have subsided and she is working full time, the court does not find cause for conversion. The motion is denied without prejudice, and the case is not converted to a case under Chapter 7 nor dismissed.

The court shall issue a civil minute order consistent with this ruling.

41. 15-22793-B-13 GOVIND/SAKUNTALA SAMY MOTION TO CONFIRM PLAN
RJM-1 Rick Morin 7-21-15 [46]
Thru #42

Tentative Ruling: The Trustee's Opposition to Motion to Confirm First Amended Chapter 13 Plan Filed July 21, 2015 and Counter Motion to Conditionally Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The plan cannot be effectively administered. The Debtors' plan under the Additional Provisions at Section 6.05 states that payments on the arrears balance shall not be paid in equal installments. However, the form plan in Section 2.08(a) states that all arrears on Class 1 claims will be paid in equal monthly installments as the arrearage dividend. Also § 1325(a)(5)(B)(iii)(I) states that if any periodic payments are made, that they shall be in equal monthly amounts. The Trustee cannot pay Debtors' claims pro-rata and cannot administer the plan without a specified monthly dividend for each creditor.

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 issue a civil minute order consistent with this ruling.

42. 15-22793-B-13 GOVIND/SAKUNTALA SAMY COUNTER MOTION TO DISMISS CASE
RJM-1 Rick Morin 8-19-15 [59]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtors 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 issue a civil minute order consistent with this ruling.

43. 11-32395-B-13 DONALD/DYANNA DAVIS MOTION TO MODIFY PLAN
THS-6 Timothy H. Stearns 6-23-15 [163]

Tentative Ruling: The Motion to Confirm 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 plan filed June 23, 2015, does not appear to be able to fund the proposed plan payments based on their updated budget. Debtors' income listed in Schedule I and expenses listed in two different Schedule J's calculates to a monthly net income of -$3,567.40. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, the Debtors do not appear to be putting forth their best efforts to repay their creditors. Debtors unsubstantiated expenses (including paying $600/month for their two sons' college tuition and expenses, $225/month for credit cards, $200/month in legal fees, $300/month for a personal loan, and Chapter 13 plan payments of $1,240/month at Line 21 of both Schedules J) do not appear to be reasonable and necessary to the reorganization of the Debtors' estate and would add an additional $2,565.00 to the Debtors' monthly net income. Additionally, the Debtors appeared to have overstated their deductions on Schedule I by $1,822.98/month. These deductions do not appear reasonable or necessary to the reorganization of the Debtors' estate and would add an additional $1,822.98 to the Debtors' monthly net income.

Third, Debtors have been able and continue to make plan payments in the amount of $1,239.00/month. However, Debtors' Schedules I and J reflect a negative monthly net income and the plan payments should be lowered to $850.00 per month beginning in June 2015. Thus, it appears that the Debtors' Schedules I and J and the plan filed June 23, 2015, do not reflect their best efforts of repaying their creditors since they continue to make plan payments that are above their negative monthly net income and the June 2015 plan payment.

Fourth, the plan does not properly account for all payments the Debtors have paid to the Trustee to date. The proper accounting is that the Debtors have paid a total of $69,212.29 to the Trustee through July 2015, and that commencing August 25, 2015, monthly payments shall be $850.00 for the remainder of the plan.

Fifth, the plan does not include the Additional Provisions of the plan filed August 8, 2014, requiring the turnover of future tax refunds.

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

The court shall issue a civil minute order consistent with this ruling.