UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 7, 2015 at 10:00 a.m.

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1. 13-35804-B-13 BRENDA BRUESSARD — MOTION TO MODIFY PLAN
SS-2 Scott D. Shumaker — 8-27-15 [58]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion for Order Confirming Second Modified Chapter 13 Plan Filed August 27, 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 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 August 27, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

2. 15-23504-B-13 DEBBIE BARKER MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis 8-17-15 [26]

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

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

The Debtor is delinquent to the Trustee in the amount of $4,203.68, which represents approximately 2.2 plan payments. By the time this matter is heard, an additional plan payment in the amount of $1,899.00 will also be due. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

3. 15-25904-B-13 JOEL PEARSON
JPJ-1 James L. Keenan

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [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). No written reply has been filed to the objection.

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

The Debtor did not appear at the duly noticed first meeting of creditors set for September 3, 2015, as required pursuant to 11 U.S.C. § 343 and, therefore, the meeting of creditors was continued to September 17, 2015. Although the Debtor appeared at that meeting, the meeting of creditors was continued again to October 15, 2015. The plan cannot be confirmed prior to a thorough examination of the Debtor under oath.

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

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

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

4. 11-45705-B-13 AARON/ROBERTA MORALES MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 8-17-15 [70]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on August 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 August 17, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

5. 15-24206-B-13 LEON DOBBINS MOTION TO CONFIRM PLAN
RJ-3 Richard L. Jare 8-12-15 [39]
Thru #6

Tentative Ruling: The Motion to Confirm 1st Modified 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 deny the motion to confirm as moot and overrule the objection as moot.

The Debtor filed a second modified plan on September 23, 2015. The confirmation hearing for the amended plan is scheduled for November 4, 2015. The earlier plan filed August 12, 2015, is not confirmed.

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

6. 15-24206-B-13 LEON DOBBINS MOTION TO EXTEND TIME
RJ-7 Richard L. Jare 9-23-15 [75]

Tentative Ruling: The Motion to Extend Time to Confirm a Plan (Nunc Pro Tunc) 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).
The court's decision is to grant the motion to extend time.

Debtor seeks to extend the time of the confirmation hearing to November 4, 2015, which would be beyond the 75-day deadline specified in the court's civil minute order dated July 21, 2015 (Dkt. 33). Debtor states that a plan could not be confirmed by October 7, 2015, since the court did not hold any hearings from September 16, 2015, through October 7, 2015. However, this court did hold a Chapter 13 hearing on September 23, 2015, and will hold Chapter 13 hearings on October 7, 2015. Nonetheless, the court will grant the Debtor's motion and extend the time to confirm a plan to November 4, 2015.

7. 13-28709-B-13 BETHANY SANDERS MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria 8-26-15 [60]

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

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

The Debtor's plan will take approximately 81 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). This is due to the Internal Revenue Service's priority claim in the amount of $3,711.10. The Debtor scheduled this claim in the amount of $1,000.00

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

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

8.	14-31409-B-13 JPJ-2 **Thru #9**	CHRISTOPHER GEARHART AND SOPHIA ARGO-GEARHART David S. Henshaw	OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 10 8-10-15 [36]

Final Ruling: No appearance at the October 7, 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 Claim Number 10 of Jefferson Capital Systems LLC and disallow the claim in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector"), requests that the court disallow the claim of Jefferson Capital Systems LLC ("Creditor"), Proof of Claim No. 10. The claim is asserted to be unsecured in the amount of $300.00. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. P. 3002(c) and/or the terms of the Debtor's confirmed plan, and no request for an 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).

The court finds that the claim was untimely filed. The deadline for all creditors (except a government unit) to file a claim was March 18, 2015. Creditor filed its untimely claim on March 19, 2015. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

9.	14-31409-B-13 JPJ-3	CHRISTOPHER GEARHART AND SOPHIA ARGO-GEARHART David S. Henshaw	OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 11 8-10-15 [40]

Final Ruling: No appearance at the October 7, 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 Claim Number 11 of Jefferson Capital Systems LLC and disallow the claim in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector"), requests that the court disallow the claim of Jefferson Capital Systems LLC ("Creditor"), Proof of Claim No. 11. The claim is asserted to be unsecured in the amount of $300.00. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. P. 3002(c) and/or the terms of the Debtor's confirmed plan, and no request for an 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).

The court finds that the claim was untimely filed. The deadline for all creditors (except a government unit) to file a claim was March 18, 2015. Creditor filed its untimely claim on March 19, 2015. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

10. 15-24609-B-13 AMANDA DENTON
AP-1 Eric W. Vandermey

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-2-15 [29]

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

Final Ruling: No appearance at the October 7, 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.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Chevrolet Colorado, VIN ending in -2568 (the "Vehicle"). The moving party has provided the Declaration of Therese Klingbeil to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant asserts that the Debtor has not made 38 post-petition payments and that the last payment was made October 10, 2010, and applied to payment due September 1, 2008.

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 $17,728.63 while the value of the Vehicle is determined to be $9,050.00, as stated in the Klingbeil Declaration. Debtor's petition does not list the Vehicle in either Schedules B or D.

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 U.S. Bank National Association, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

No other or additional relief is granted by the court.

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

11.	15-25709-B-13 JPJ-1	MICHAEL/JESSICA SHELTON Michael O'Dowd Hays	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR CONDITIONAL MOTION TO DISMISS CASE 9-16-15 [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 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 did not appear at the duly noticed first meeting of creditors set for September 10, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the plan payment in the amount of $161.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fee is $165.00. The plan does not comply with § 4.02 of the mandatory form plan.

Third, the plan will take approximately 111 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

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

12. 13-21414-B-13 ELLAMAE LOFTON
RJ-2 Richard L. Jare

MOTION TO AVOID LIEN OF WACHOVIA DEALER SERVICES, INC.
9-9-15 [35]

Final Ruling: No appearance at the October 17, 2015, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f)(1)(A) Wachovia Dealer Services, Inc. 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 without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Wachovia Dealer Services, Inc. ("Creditor") against property of EllaMae Lofton ("Debtor") commonly known as 516 Phoenix Circle, Vallejo, California ("Property").

Debtor asserts that a judgment was entered against Debtor in favor of Creditor in the amount of $7,911.44. The Debtor does not provide a copy of the abstract judgment itself. Instead, the Debtor provides as an exhibit a "Document Details" as to the existence of the abstract of judgment, but not the amount of the judgment. In fact, there is nothing which establishes the amount of the purported judgement. The motion states a judgment amount of $7,911.44 but the Debtor's declaration states the amount is $13,166.83. The motion and declaration also state the abstract of judgment is filed as an exhibit. It is not. Debtor has failed to carry its burden. The motion is therefore denied without prejudice

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

13. 14-25916-B-13 JAY/ANGELA SAGARAL MOTION TO MODIFY PLAN
SJS-4 Scott J. Sagaria 8-20-15 [72]

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

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

First, the Debtors are delinquent to the Trustee in the amount of $40.00, which represents approximately 1 partial plan payment. By the time this matter is heard, an additional plan payment in the amount of $485.00 will also be due.

Second, the Debtors provided for the treatment of the priority claim of the Internal Revenue Service for taxes in Class 5 of the plan. However, the Debtors' Motion for Allowance and Future Payment on Untimely Filed Claim was heard September 2, 2015, and was denied by this court (Civil Minute Order, Dkt. 80). Debtors' scheduled claim of the Internal Revenue Service is contrary to the court's ruling.

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

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

14.	15-25816-B-13 JPJ-1	JOSE CHAPA AND ESTHER SWENSEN-CHAPA Stephen N. Murphy	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-10-15 [24]

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.

The Joint Debtor has not provided the Trustee with requested copies of certain items related to Joint Debtor's ownership and operation of a business. These items include, but are not limited to, a completed business examination checklist, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtors have not complied with 11 U.S.C. § 521.

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

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

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

15. 15-25118-B-13 CYNTHIA BROWN
RK-2 Douglas P. Broomell

MOTION FOR SANCTIONS AGAINST DEBTOR'S ATTORNEY FOR MISCONDUCT UNDER FRBP 9011
9-14-15 [60]

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, the Motion for Sanctions Pursuant to Federal Rule of Bankruptcy Procedure 9011 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 motion will be determined at the scheduled hearing.

16. 15-24019-B-13 ROY/CHERISE WHITAKER MOTION TO CONFIRM PLAN
RMW-4 Pro Se 8-6-15 [58]

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 deny the motion to confirm as moot and overrule the objection as moot.

The Debtors filed an amended plan on September 2, 2015. The confirmation hearing for the amended plan is scheduled for November 4, 2015. The earlier plan filed July 15, 2015, is not confirmed.

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

17. 12-30721-B-13 FRANCISCO/NICOLE MARIN MOTION TO MODIFY PLAN
MET-4 Mary Ellen Terranella 8-27-15 [66]

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

The court's decision is to permit the requested modification and confirm the modified plan, provided that the order modifying plan provides for the post-petition mortgage payment due to GMAC Mortgage as a Class 2 claim in the amount of $2,557.85, with 0% interest, plus a late fee of $130.00, for a total Class 2 Claim of $2,687.85, with monthly payments in the amount of $125.00.

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

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

18. 13-23221-B-13 JPJ-5 — ERIC ALSTRAND AND DEBRA BRIOZA — John G. Downing — AMENDED MOTION TO MODIFY PLAN — 8-25-15 [108]

Tentative Ruling: The Trustee's Amended Motion for Post-Confirmation Modification of the 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 amended modified plan.

The Chapter 13 Trustee seeks to increase Debtor's plan payments to $800.00 per month beginning in August 2015 and continuing through the remaining life of the plan. In opposition, the Debtors assert that the Trustee has not met the good faith requirement of § 1325(a)(3) for the proposed modification. Good faith is determined by looking at the totality of the circumstances, and the court is permitted to consider the four factors of *In re Pasley*, 507 B.R. 312 (Bankr. E.D. Cal 2014). Additionally, in analyzing good faith, the court may consider a debtor's changed circumstances. *Id.*, at 321, citing *Mattson v. Howe (In re Mattson)*, 468 B.R. 361, 367 (9th Cir. B.A.P. 2012).

The court finds that the Trustee has met the good faith requirement of § 1325(a)(3). According to the Debtors' updated Schedules I and J filed on July 15, 2015, the Debtors' monthly net income is $464.00 and their spending for food expenses is approximately $950.00 per month. The food expenses are comprised of approximately $630.00 per month on dining out at mainly sit-in restaurants and approximately $330.00 per month on grocery store purchases. The current spending for food expenses is an increase by $350.00 per month from the original Schedules.

Additionally, Debtors are contributing $400.00 per month toward their adult son, who Debtors assert lost his job. Joint Debtor's declaration states that the $400.00 per month is used to help the son and assist in paying for his storage. Debtors state that they have been making these payments since December 2014 and anticipate continuing to make them through early-2016.

The increased amount in the Debtors' food budget and the voluntary contributions to their adult son are not reasonable and necessary to the Debtors' estate. Taking into account the increased food expenses and the support payments, Debtors' monthly net income is no longer $464.00 but rather $1,214.00. Additionally, the Trustee has exercised good faith by acknowledging the Debtors' circumstances may change in the near future and has allowed the Debtors to keep a portion of these unnecessary funds to further supplement their lifestyle while simultaneously repaying their creditors.

The additional funds being paid into the plan will be paid exclusively to the general unsecured creditors and will increase their percentage from 1.0% to 8.3%. No other provisions from the previously confirmed plan will be changed.

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

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

19.	14-31623-B-13 SNM-3	JAMES/NANCY LOCKWOOD Stephen N. Murphy	OBJECTION TO CLAIM OF SANTANDER CONSUMER USA, INC., CLAIM NUMBER 4 8-21-15 [50]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Debtors' Objection to Proof of Claim Number 4 Filed by Santander Consumer USA, Inc., as Servicer for ETrade has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim Number 4 of Santander Consumer USA, Inc. and disallow the claim except to the extent already disbursed by the Chapter 13 Trustee in the amount of $4,123.25, which was in accordance with the confirmed plan and timely filed claim.

Debtors Eric Alstrand and Debra Brioza ("Objectors"), request that the court disallow the claim of Santander Consumer USA, Inc. ("Creditor"), Proof of Claim No. 4. The claim is asserted to be unsecured in the amount of $43,732.62. Objectors assert that they do not owe this debt, that they had surrendered the 2003 Rexair RV (VIN ending in -07429), and that there is no evidence of the sale of a 2003 Rexair RV with an alleged claim for deficiency in the amount of $43,732.62.

In support, Chapter 13 Trustee Jan Johnson has filed a response requesting that the court sustain the Debtors' objection and that the claim be disallowed except to the extent already disbursed by the Trustee in accordance with the confirmed plan and timely filed claim. To date, the Trustee has paid $4,123.25 to the Creditor on its timely filed claim for the deficiency following the sale of a 2003 Rexair RV.

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).

The Debtors stated in their declaration that they surrendered their 2003 Rexair RV, that it was in very good condition at the time of surrender, that the vehicle had a value of at least $36,750.00, and that they never received any evidence from the Creditor of an alleged sale. The Creditor has failed to file any response to the Debtors' objection and the Trustee has provided a response supporting the Debtors' objection. Based on the evidence presented, the court finds that Debtors have satisfied their burden of overcoming the presumptive validity of the claim.

Claim Number 4 of Santander Consumer USA, Inc. is disallowed, except to the extent already disbursed by the Chapter 13 Trustee in the amount of $4,123.25, which was in accordance with the confirmed plan and timely filed claim. The objection to the proof of claim is sustained.

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

20. 15-26226-B-13 PEARLIE ABELEDA
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [17]

WITHDRAWN BY M.P. 9/21/15

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

There being no objection to confirmation, the plan filed August 4, 2015, will be confirmed.

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

21.	11-38127-B-13 JPJ-2	VASILIY/LYUBOV SHUST Peter G. Macaluso	OBJECTION TO CLAIM OF CITIMORTGAGE, INC., CLAIM NUMBER 17 8-10-15 [52]

Final Ruling: No appearance at the October 7, 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 Claim Number 17 of CitiMortgage Inc. and disallow the claim in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector"), requests that the court disallow the claim of CitiMortgage Inc. ("Creditor"), Proof of Claim No. 17. The claim is asserted to be secured in the amount of $110,637.84. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. P. 3002(c) and/or the terms of the Debtor's confirmed plan, and no request for an 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).

The court finds that the claim was untimely filed. The deadline for all creditors (except a government unit) to file a claim was November 30, 2011. Creditor filed its untimely claim on July 6, 2012. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

22. 14-32029-B-13 RONALD DENTON
JPJ-3 Candace Y. Brooks

OBJECTION TO CLAIM OF TERRISA LOUISE YANCY, CLAIM NUMBER 5 AND/OR OBJECTION TO CLAIM OF TERRISA LOUISE YANCY, CLAIM NUMBER 9
8-10-15 [25]

Final Ruling: No appearance at the October 7, 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 Claim Number 9 of Terrisa Louise Yancy and disallow the claims in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector"), requests that the court disallow the claim of Terrisa Louise Yancy ("Creditor"), Proof of Claim No. 9. The claim is asserted to be priority secured in the amount of $11,206.39. Objector asserts that the claim appears to be a duplicate of the claim filed by Placer County Department of Child Support Services c/o California State Disbursement Unit in the amount of $9,086.94 since both proofs of claim recite the same account number and the same documentation.

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

The court finds that Claim Number 9 is a duplicate of Claim Number 5 filed by Placer County Department of Child Support Services c/o California State Disbursement Unit in the amount of $9,086.94. Both Claim Numbers 5 and 9 recite the same account number and the same documentation. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim identified as Claim Number 9 is disallowed in its entirety. The objection to the proof of claim is sustained.

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

23. 13-27034-B-13 NANCY LOPEZ MOTION TO MODIFY PLAN
SJS-6 Scott J. Sagaria 8-20-15 [88]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Opposition to Debtor's Motion to Modify 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 August 20, 2015, will be confirmed.

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

24. 10-47835-B-13 MARVIN/MARY WILLIAMS MOTION TO MODIFY PLAN
SDB-6 W. Scott de Bie 8-21-15 [60]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 21, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

25. 15-24736-B-13 JOSHUA/MARILYN JOHNSON CONTINUED ORDER TO SHOW CAUSE
Thru #26 Julius M. Engel 8-20-15 [42]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtors, Trustee, and other such other parties in interest as stated on the Certificate of Service on August 20, 2015. This matter was continued from September 16, 2015.

The matter was discharged by chambers order entered September 16, 2015, Dkt. 63.

26. 15-24736-B-13 JOSHUA/MARILYN JOHNSON MOTION TO CONFIRM PLAN
JME-1 Julius M. Engel 8-25-15 [48]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated June 11, 2015, 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.

First, it is unclear the date of the plan the Debtors are seeking to confirm. It appears that the plan the Debtors seek to confirm is dated June 24, 2015, and not June 11, 2015.

Second, the plan payment in the amount of $4,749.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fee is $7,000.00. The plan does not comply with § 4.02 of the mandatory form plan.

Third, the plan will take approximately 446 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the plan proposes an impermissible modification of the secured claim of Select Portfolio Services, the holder of the first deed of trust on the Debtors' principal residence. No evidence that the lender has consented to or is considering a loan modification has been presented.

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

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

27. 15-26036-B-13 SHIRLEY MCNEAL
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [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). 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 payment in the amount of $150.00 for months 1 through 9 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fee is $276.00. The plan does not comply with § 4.02 of the mandatory form 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 enter an appropriate civil minute order consistent with this ruling.

28. 15-26237-B-13 CONNIE PENDELTON
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-10-15 [19]

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on October 1, 2015. The earlier plan filed August 5, 2015, is not confirmed.

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

29. 15-26339-B-13 WILLIAM/NANCIE DUNHAM — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
CK-1 Catherine King — 8-31-15 [14]
Thru #30

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtors' declarations. Debtors are the owner of the subject real property commonly known as 14270 Old Oregon Trail, Redding, California ("Property"). Debtors seek to value the Property at a fair market value of $213,221.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property 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 $220,871.00. Creditor's second deed of trust secures a claim with a balance of approximately $101,870.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

30. 15-26339-B-13 WILLIAM/NANCIE DUNHAM — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Catherine King — 9-17-15 [24]

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).

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on September 30, 2015. The confirmation hearing for the amended plan is scheduled for November 18, 2015. The earlier plan filed August 10, 2015, is not confirmed.

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

31. 14-28940-B-13 SBT-2 — TERRANCE JR. AND BRIGETTE ZACHERY — Susan B. Terrado — MOTION TO MODIFY PLAN 8-17-15 [53]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Debtors [sic] Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy 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 August 17, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

32. 15-25740-B-13 VERNON/JULIET ATKINS MOTION TO CONFIRM PLAN
RNE-1 Ronda N. Edgar 8-26-15 [18]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 26, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

33. 15-25941-B-13 DEDRA RUSSELL
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [22]

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.

The Debtor did not appear at the duly noticed first meeting of creditors set for September 3, 2015, as required pursuant to 11 U.S.C. § 343 and, therefore, the meeting was continued to October 1, 2015. The plan cannot be confirmed prior to a thorough examination of the Debtor under oath.

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

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

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

34. 12-32245-B-13 CAROLE ARBUCKLE
JPJ-1 Richard A. Chan

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
9-3-15 [68]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case with Prejudice Pursuant to 11 U.S.C. § 349(a) 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 continue the matter to November 18, 2015, at 10:00 a.m.

This Motion to convert, or in the alternative dismiss, the Chapter 13 bankruptcy case has been filed by Jan Johnson ("Movant"), Chapter 13 Trustee. Movant asserts that the case should be converted or dismissed based on the following: (1) the Debtor has failed to remit payment to the Trustee sufficient to pay 100% to unsecured creditor as stated in Debtor's first amended plan confirmed on November 13, 2012; (2) the total value of non-exempt property in the estate is approximately $832,000.36 and thus conversion to a Chapter 7 would be in the best interest of creditors and the estate; and (3) in the alternative the case should be dismissed with prejudice based on the totality of the circumstances that the Debtor has acted in bad faith.

Response by Debtor

Debtor asserts that she has received notice of a special lender that would raise the funds necessary to pay the creditors in full. Debtor requests that the court continue the matter in order to allow for the filing of a motion for permission to incur debt. Debtor states that the Trustee is not opposed to a continuance of the present motion.

The motion is continued to November 18, 2015, at 10:00 a.m.

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

35. 11-39246-B-13 ROWENA WALKER
PGM-1 Peter G. Macaluso

MOTION TO RECONSIDER DISMISSAL OF CASE
9-4-15 [96]

DEBTOR DISMISSED: 08/06/2015

Final Ruling: No appearance at the October 17, 2015, hearing is required.

The Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the Debtor's case for failure to make plan payments. Debtor states that she inadvertently sent her payment to the wrong PO Box for June 2015 and that this resulted in the delinquency. The Debtor states in her declaration that she submitted increased payment for July 2015, as instructed by the Trustee's office, and kept in communication with the Trustee to ensure receipt of the payment. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the Debtor's request is supported by both cause and excusable neglect. Cause exists based on Debtor's mistake of mailing her payment to a PO Box address. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. The Debtor is entering month 49 of a 60 months plan. Allowing the case to proceed is in the best interest of all creditors, as general unsecured creditors will receive no less than 25% dividend in the plan and could increase since all secured claims have been paid in full.

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

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

36. 14-26446-B-13 TODD/DENISE BEINGESSNER MOTION TO MODIFY PLAN
SJS-5 Scott J. Sagaria 8-26-15 [65]

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

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

The plan will take approximately 75 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

37.	11-39947-B-13 MRL-1	SEAN/KATHERINE ABERCROMBIE Mikalah R. Liviakis	MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS' ATTORNEY(S) 9-7-15 [47]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Final Application of Attorney Mikalah Raymond Livikais for Compensation 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

Mikalah Raymond Livikais ("Applicant"), the attorney to Chapter 13 Debtors Sean Abercrombie and Katherine Abercrombie ("Clients"), makes a final request for the allowance of $660.50 in fees and $0.00 in expenses. The period for which the fees are requested is for September 24, 2014, through September 2, 2015. The order of the court approving employment of Applicant was entered on August 6, 2014, Dkt. 44.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 50, Exh. A).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

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

Fees	$660.50
Costs and Expenses	$ 0.00

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

38. 15-26248-B-13 ANDREW/EMILY TWISS
JPJ-1 W. Scott de Bie
Thru #39

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [20]

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). Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

Feasibility of the plan depends on the granting of a motion to value collateral for JP Morgan Chase National Association. This motion appears as Item #39 and was granted. The claim of JP Morgan Chase National Association secured by a second in priority deed of trust recorded against the real property commonly known as 485 Miller Court, Dixon, California, was determined to be a secured claim in the amount of $0.00

There being no other objections, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 5, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling. will submit the proposed order to the court.

39. 15-26248-B-13 ANDREW/EMILY TWISS
SDB-1 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE, N.A.
8-27-15 [15]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Debtor's [sic] Motion for Order Valuing Collateral 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 JP Morgan Chase National Association at $0.00.

The motion to value filed by Debtors to value the secured claim of JP Morgan Chase National Association ("Creditor") is accompanied by Joint Debtor's declaration. Debtors are the owner of the subject real property commonly known as 485 Miller Court, Dixon, California ("Property"). Debtors seek to value the Property at a fair market value of $289,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property 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 $329,322.00. Creditor's second deed of trust secures a claim with a balance of approximately $36,900.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

40. 15-25952-B-13 ANTHONY/LEETA HIGHTOWER — MOTION TO VALUE COLLATERAL OF
GG-1 Gerald B. Glazer — NATIONSTAR MORTGAGE, LLC
Thru #41 — 8-19-15 [19]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion for Order Valuing Collateral (2nd Deed of Trust) of Nationstar Mortgage LLC 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 Nationstar Mortgage LLC at $0.00.

The motion to value filed by Debtors to value the secured claim of Nationstar Mortgage LLC ("Creditor") is accompanied by Joint Debtor's declaration. Debtors are the owners of the subject real property commonly known as 3 Anton Court, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $331,217.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property 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 $449,096.37. Creditor's second deed of trust secures a claim with a balance of approximately $31,529.97. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

41. 15-25952-B-13 JPJ-1 — ANTHONY/LEETA HIGHTOWER, Gerald B. Glazer — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-10-15 [25]

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 meeting of creditors was held on October 1, 2015, at which time the Debtors must have filed their tax returns and provided the Trustee with copies to review in order to assess the feasibility of the plan or whether the plan has been proposed in good faith.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form B22C-2) includes an improper expense at line 9b and line 33 for the second deed of trust held by Nationstar Mortgage in the amount of $275.90. The second deed of trust is a wholly unsecured debt. Payments to wholly unsecured junior deeds of trust do not qualify as deductions and must be excluded from Form 22C. The Debtors' correct monthly disposable income is or should be $252.38 and the Debtors must pay no less than $15,142.80 to general unsecured creditors. The Trustee calculates that the plan will pay a dividend of only 0%, or approximately $0.00 to general unsecured creditors.

Third, the Calculation of Disposable Income (Form B22C-1) includes an improper expense at line 5 for ordinary and necessary business expenses of $7,720.00. Debtors may not deduct business expenses from gross receipts to calculate current monthly income. *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (B.A.P. 9th Cir. 2008).

Fourth, feasibility of the plan depends on the granting of a motion to value collateral for Nationstar Mortgage LLC. This motion was granted at Item #40.

For the first, second, and third 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a

plan within 75 days, the case will be dismissed on the Trustee's ex parte application.]

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

42. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
KMD-3 Mark Shmorgon — 9-15-15 [99]

HUNT CONSTRUCTION CO. VS.

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

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

Hunt Construction Co. ("Movant") seeks relief from the automatic stay with respect to the Debtors' lease of real property commonly known as 5701 88th Street, Unit B, Sacramento, California (the "Property"). Movant has provided the Declaration of Herb Liverett to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant states that there are 6 post-petition defaults, with a total of $27,516.78 in post-petition payments past due. Additionally, there are 7 pre-petition payments in default, with a total of $51,458.60 in pre-petition payments past due. The Liverett Declaration states that the Movant was awarded judgment for possession of the Property on March 9, 2015, prior to the Debtors' filing bankruptcy.

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and to commence and/or continue unlawful detainer proceedings to recover possession of the Property.

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

No other or additional relief is granted by the court.

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

43. 15-26154-B-13 MARGARET DAVIDSON
JM-1 Michael O'Dowd Hays
Thru #45

OBJECTION TO CONFIRMATION OF PLAN BY SPRINGLEAF FINANCIAL SERVICES, INC.
9-16-15 [16]

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). No written reply has been filed to the objection.

The court's decision is to continue the matter to October 14, 2015, in light of Item #44.

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

44. 15-26154-B-13 MARGARET DAVIDSON
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-16-15 [22]

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 continue the matter to October 14, 2015, in order to provide the Debtor with additional time to receive her social security card and to be examined at the continued meeting of creditors held on October 8, 2015.

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

45. 15-26154-B-13 MARGARET DAVIDSON
MOH-1 Michael O'Dowd Hays

MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES, INC.
9-23-15 [25]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, Debtor's Motion to Value Collateral of Springleaf Financial Services, Inc. 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 deny without prejudice the motion to value collateral.

The motion filed by Debtor to value the secured claim of Springleaf Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a

2000 Ford Taurus 4-door SEL ("Vehicle"). The Debtor seeks to value the Vehicle at a private party value of $1,381.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the court finds issue with the Debtor's valuation. The Debtor's declaration and motion state that the $1,381.00 valuation is a "private party" value based on her review of Kelley Blue Book. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a). In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

46.	12-34355-B-13 JPJ-3	OSCAR VILLEGAS AND MARIA CASTANON Scott D. Shumaker	OBJECTION TO CLAIM OF NEWPORT BEACH HOLDINGS, LLC, CLAIM NUMBER 14 8-10-15 [94]

Final Ruling: No appearance at the October 7, 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 Claim Number 14 of Newport Beach Holdings LLC and disallow the claim in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector"), requests that the court disallow the claim of Newport Beach Holdings LLC ("Creditor"), Proof of Claim No. 14. The claim is asserted to be secured in the amount of $138,482.30. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. P. 3002(c) and/or the terms of the Debtor's confirmed plan, and no request for an 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).

The court finds that the claim was untimely filed. The deadline for all creditors (except a government unit) to file a claim was December 5, 2012. Creditor filed its untimely claim on January 16, 2013. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

47. 15-22255-B-13 MANPREET/GURPREET LAKHAT — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 8-26-15 [44]
Thru #48

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan Filed on August 26, 2015, 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 continue the matter to October 14, 2015, in order to be heard in conjunction with the motions to avoid liens held by Citibank and Target National Bank.

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

48. 15-22255-B-13 MANPREET/GURPREET LAKHAT — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
PGM-3 Peter G. Macaluso — 8-26-15 [50]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

The motion to value filed by Debtors to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtors declaration. Debtors are the owners of the subject real property commonly known as 2576 Emerald Drive, Yuba City, California ("Property"). Debtors seek to value the Property at a fair market value of $294,031.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property 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 $356,573.00. Creditor's second deed of trust secures a claim with a balance of approximately $150,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

49.	11-23459-B-13 MRL-1	MONTGOMERY/DEBORAH CASEY Mikalah R. Liviakis	MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS' ATTORNEY(S) 9-7-15 [59, 63]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Final Application of Attorney Mikalah Raymond Livikais for Compensation 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

Mikalah Raymond Livikais ("Applicant"), the attorney to Chapter 13 Debtors Montgomery Casey and Deborah Casey ("Clients"), makes a final request for the allowance of $1,083.50 in fees and $0.00 in expenses. The period for which the fees are requested is for October 16, 2014, through August 31, 2015. The order of the court approving employment of Applicant was entered on August 15, 2015, Dkt. 46.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkts. 62 and 66).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

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

Fees	$1,083.50
Costs and Expenses	$ 0.00

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

50. 15-21659-B-13 CHARLES HUGHES MOTION TO CONFIRM PLAN
CAH-1 Peter G. Macaluso 8-7-15 [62]
Thru #52

Tentative Ruling: The Motion to Confirm Second 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 confirm the second amended plan provided that the Trustee confirm that the Debtor is current on plan payments, that is has received and reviewed the requested documents related to Debtor's ownership and operation of Norcal Film Financing, and that the plan is feasible pursuant to 11 U.S.C. §§§ 1325(a)(3), (4), and (6) and § 1325(b)(1)(B).

Provided that the aforementioned are satisfied, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

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

51. 15-21659-B-13 CHARLES HUGHES COUNTER MOTION TO DISMISS
CAH-1 Peter G. Macaluso CASE/PROCEEDING
9-21-15 [78]

Tentative Ruling: The court issues no tentative ruling for reasons stated in Item #50.

The motion will be determined at the scheduled hearing.

52. 15-21659-B-13 CHARLES HUGHES CONTINUED MOTION TO DISMISS
JPJ-2 Peter G. Macaluso CASE
7-9-15 [56]

Tentative Ruling: The court issues no tentative ruling for reasons stated in Item #50.

The Trustee's Motion to Dismiss Case was set for hearing on at least 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1) and was continued from August 26, 2015.

The motion will be determined at the scheduled hearing.

53. 15-25761-B-13 FRANCISCO QUEMA
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-10-15 [19]

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on September 24, 2015. The confirmation hearing for the amended plan is scheduled for November 18, 2015. The earlier plan filed July 20, 2015, is not confirmed.

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

54. 15-25062-B-13 WESLEY/LAURIE PAMPLONA MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 8-7-15 [23]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated August 7, 2015, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 7, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

55. 11-48264-B-13 BRIAN/KAREN CESAR — CONTINUED MOTION TO MODIFY PLAN
CAH-2 Peter G. Macaluso — 7-27-15 [76]

Tentative Ruling: The court issues no tentative ruling.

The Debtors' Motion to Confirm Debtors' Third 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 by the Chapter 13 Trustee and Cam IX Trust, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

56. 15-25764-B-13 JPJ-1 — MAX/NATALIA GULKO, Mark Shmorgon — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 9-10-15 [41]

Thru #60

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).

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

The Debtors filed an amended plan on September 3, 2015. The confirmation hearing for the amended plan is scheduled for October 21, 2015. The earlier plan filed July 20, 2015, is not confirmed.

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

57. 15-25764-B-13 MS-1 — MAX/NATALIA GULKO, Mark Shmorgon — MOTION TO AVOID LIEN OF CACH, LLC, 8-13-15 [13]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Max Gulko and Natalia Gulko ("Debtors") commonly known as 5157 Thomasino Way, Antelope, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $5,403.76. An abstract of judgment was recorded with Sacramento County on September 11, 2014, which encumbers the Property. All other liens recorded against the Property total $177,233.16.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $190,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,992.82 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this

judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

58. 15-25764-B-13 MS-2 — MAX/NATALIA GULKO, Mark Shmorgon — MOTION TO AVOID LIEN OF CACH, LLC, 8-13-15 [18]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Max Gulko and Natalia Gulko ("Debtors") commonly known as 5157 Thomasino Way, Antelope, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $3,813.40. An abstract of judgment was recorded with Sacramento County on July 17, 2014, which encumbers the Property. All other liens recorded against the Property total $173,419.76.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $190,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,992.82 on Schedule C.

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

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

59. 15-25764-B-13 MS-3 — MAX/NATALIA GULKO, Mark Shmorgon — MOTION TO AVOID LIEN OF CACV OF COLORADO, LLC, 8-13-15 [23]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the

equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of CACV of Colorado, LLC ("Creditor") against property of Max Gulko and Natalia Gulko ("Debtors") commonly known as 5157 Thomasino Way, Antelope, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $3,813.40. An abstract of judgment was recorded with Sacramento County on February 20, 2009, which encumbers the Property. All other liens recorded against the Property total $169,606.36.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $190,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,992.82 on Schedule C.

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

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

60.	15-25764-B-13 MS-4	MAX/NATALIA GULKO Mark Shmorgon	MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC. 8-13-15 [28]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of Kelkris Associates, Inc. ("Creditor") against property of Max Gulko and Natalia Gulko ("Debtors") commonly known as 5157 Thomasino Way, Antelope, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $1,599.18. An abstract of judgment was recorded with Sacramento County on September 29, 2006, which encumbers the Property. All other liens recorded against the Property total

$168,007.18.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $190,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,992.82 on Schedule C.

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

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

61. 12-38965-B-13 JOSEPH/VICKIE WHITSON
JPJ-4 Peter G. Macaluso

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-27-15 [62]

Tentative Ruling: The Trustee's Motion to Convert 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 motion will be continued to November 18, 2015, at 10:00 a.m. to be heard in conjunction with Debtors' motion to modify Chapter 13 plan. Debtors filed their first modified plan on October 5, 2015.

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

62. 13-30865-B-13 KERRY/ALETA DAVIS — MOTION TO APPROVE LOAN MODIFICATION
MET-1 Mary Ellen Terranella — 9-19-15 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Order Approving Loan Modification 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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' monthly mortgage payment by $209.00 per month. The principal, interest, and monthly escrow payment is $2,092.06. A copy of the Home Affordable Modification Agreement is provided as Exhibit A, Dkt. 20.

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

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

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

63. 14-29665-B-13 SCOTT BARBER ORDER TO SHOW CAUSE
ULC-2 Julie B. Gustavson 8-18-15 [63]

Tentative Ruling: The Order to Show Cause was served by the Clerk of the Court on Debtor, Trustee, and other such other parties in interest as stated on the Certificate of Service on August 18, 2015.

The Order to Show Cause will be determined at the scheduled hearing.

64. 15-24767-B-13 SUE WILLIAMSON
APN-1 Scott J. Sagaria
Thru #66

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
7-7-15 [17]

Tentative Ruling: Secured Creditor, Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services's Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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.

Feasibility depends on the granting of the motion to value collateral of Wells Fargo Financial Services. This motion was denied at Item #66.

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

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

65. 15-24767-B-13 SUE WILLIAMSON
JPJ-1 Scott J. Sagaria

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-15-15 [26]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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 Debtor has not provided proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, feasibility depends on the granting of the motion to value collateral of Wells Fargo Financial Services. This motion was denied at Item #66.

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

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

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

66. 15-24767-B-13 SUE WILLIAMSON
SJS-1 Scott J. Sagaria

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
7-9-15 [22]

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

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

The motion filed by Debtor to value the secured claim of Wells Fargo Bank, NA dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 BMW 525i ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,420.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4 filed on July 2, 2015, by Wells Fargo Bank, NA dba Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

Opposition by Creditor

In response, Creditor asserts that the retail market value of the Vehicle is approximately $8,770.00 based on the appraisal by Auto Inspection Service, an appraisal service company. Auto Inspection Service states that it based its determination after reviewing Debtor's declaration for indication as to the condition of the Vehicle. Since Debtor's declaration offered no indication as to either positive or negative body condition, interior condition, or mechanical condition, Auto Inspection Service determined the Vehicle to be in average condition having mileage of 137,300 as of June 2015.

Discussion

The retail value of $8,770.00 provided by the Creditor can be relied upon by the court to establish the price a retail merchant would charge for the Vehicle. The standard must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a). In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

Auto Inspection Service's valuation is accorded greater weight than the Debtor's valuation since it utilizes the NADA Used Car Guide, Kelly Blue Book Auto Market Report, and the Debtor's declaration to determine the price a retail merchant would charge. The Debtor, on the other hand, offers nothing more than her uncorroborated lay opinion. Accordingly, the court is not persuaded by the Debtor's valuation and, as a result, the Debtor has failed to satisfy her burden under § 506.

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

67. 15-24470-B-13 DONNA VANDERHORST MOTION TO CONFIRM PLAN
RJ-6 Richard L. Jare 8-8-15 [64]

Tentative Ruling: The Motion to Confirm 2nd Modified Chapter 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 second amended plan.

First, the plan does not provide a cure for PennyMac Corp., By PennyMac Loan Services, LLC ("Creditor") pre-petition arrears in the total amount of approximately $8,191.66. The Debtor has not satisfied 11 U.S.C. § 1325(a)(5)(B)(ii).

Second, the plan does not provide for interest payments on Creditor's mortgage arrears, which is required under *Rake v. Wade*, 508 U.S. 464 (1993), and applicable in this case since the subject loan was entered into on February 21, 1990, before the *Rake* decision was superceded by § 1322(e). *See In re Medez*, 255 B.R. 143, 148-49 (Bankr. D. N.J. 2000); *In re Bagne*, 219 B.R. 272, 276 (Bank. E.D. Cal. 1998).

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

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

68. 15-21973-B-13 CHRISTOPHER/SHERRY WILSON MOTION TO APPROVE LOAN MODIFICATION
DBJ-3 Douglas B. Jacobs 8-11-15 [36]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

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

Debtors seek court approval to incur post-petition credit. HSBC Bank USA, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The modification provides for a new mortgage payment of $575.79 for the first year, $657.48 for the second year, and $699.30 for years 3 through 40. This represents an interest rate of 4.750% for the first year, 5.750% for the second year, and 6.250% for years 3 through 40.

The motion is supported by the Declaration of Christopher Wilson and Sherry Wilson. The Declaration affirms Debtors' desire to obtain the post-petition financing; however, it does not provide evidence of Debtors' ability to pay this claim on the modified terms. Nevertheless, the court takes judicial notice of the Debtors' confirmed plan (Dkts. 18, 31, 35), which reflects a current monthly payment of the loan to be re-financed of $774.39, making the new loan payments less.

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

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

69. 15-24077-B-13 BLF-1 **Thru #71**

ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER
Gordon G. Bones

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
8-26-15 [24]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

The court's decision is to continue this matter to November 18, 2015, at 10:00 a.m. as the matter may be affected by the appraisal obtained under the motion to value collateral of Green Tree, Item #70.

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

70. 15-24077-B-13 BLF-2

ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER
Gordon G. Bones

AMENDED MOTION TO VALUE COLLATERAL OF GREEN TREE
8-26-15 [33]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion to Value Collateral of Green Tree - Amended 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 continue the matter to November 18, 2015 at 10:00 a.m.

The motion to value filed by Debtors to value the secured claim of Green Tree ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 9388 Trebbiano Circle, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of $379,164.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property 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.

Opposition

Creditor has filed an opposition asserting that the value of the Property is greater than $379,164.00. Creditor asserts that it is currently in the process of obtaining its own valuation in order to determine the value of the Property and states it will supplement its opposition with evidence of the value. Creditor requests that the court continue the matter to allow time for the Creditor to obtain an appraisal.

Discussion

The first deed of trust secures a claim with a balance of approximately $388,163.34. The second deed of trust secures a claim with a balance of approximately $23,098.60. Creditor's third deed of trust secures a claim with a balance of approximately $39,730.07. Given that there is a dispute regarding the valuation of the Property, the valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is continued to November 18, 2015 at 10:00 a.m.

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

71.	15-24077-B-13 BLF-3	ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER Gordon G. Bones	MOTION TO CONFIRM PLAN 8-26-15 [30]

Final Ruling: No appearance at the October 7, 2015, hearing is required.

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

The court's decision is to continue this matter to November 18, 2015, at 10:00 a.m. as

feasibility depends on the granting of motions to value collateral for Bank of America and Green Tree.

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

72. 14-29883-B-13 DEANNA BURCH
MWB-1 Mark W. Briden

MOTION TO VACATE DISMISSAL OF CASE
9-1-15 [29]

DEBTOR DISMISSED: 08/28/2015

Final Ruling: No appearance at the October 7, 2015, hearing is required.

The Motion for Order Vacating Order of Dismissal Filed August 28, 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 grant the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the Debtor's case for failure to provide a 2014 federal income tax return, a W-2 wage and tax statement for 2014, and copies of payment advices for 2015. Debtor states that her counsel inadvertently failed to file a timely opposition to the Trustee's motion to dismiss case, but that the Debtor did provide the Trustee prior to the August 26, 2015, hearing the W-2 and bank statements. Debtor further asserts that she has no federal income tax return to provide because the tax return has not been filed since Debtor filed an extension. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the Debtor's request is supported by both cause and excusable neglect. Cause exists based on the inadvertence of Debtor's counsel to file a timely response to the Trustee's motion to dismiss case. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. The Debtor is current under the terms of her confirmed Chapter 13 plan.

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

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

73. 1-22784-B-13 JOSEPH/HEATHER ADKINS
BB-3 Bonnie Baker

MOTION TO VACATE DISMISSAL OF CASE
9-17-15 [82]

DEBTOR DISMISSED:
09/09/2015
JOINT DEBTOR DISMISSED:
09/09/2015

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

The court's decision is grant the motion to vacate dismissal.

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the Debtor's case for failure to confirm a plan by August 25, 2015. On August 12, 2015, the court held a hearing on Debtors' motion to value collateral for Tri Counties Bank ("Creditor") and the court valued Creditor's secured claim at $3,743.77. Debtors assert that they subsequently prepared a second amended plan to account for the court's valuation of Creditor's secured claim, but that the earliest a motion to confirm could have been scheduled was September 23, 2015. Debtors further state that their counsel's computer program failed to maintain the August 25, 2015, deadline, that their counsel inadvertently did not obtain an extension of time from the Trustee, and that their counsel advised the Debtors not to file a second amended plan until the court ruled upon the Creditor's request for reconsideration (Dkt. 72). The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the Debtors' request is supported by both cause and excusable neglect. Cause exists since the computer program of the Debtors' counsel failed to maintain the August 25, 2015, deadline, their counsel inadvertently did not obtain an extension of time from the Trustee, and their counsel advised the Debtors not to file a second amended plan until the court ruled upon the Creditor's request for reconsideration. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect. Vacating dismissal will not result in prejudice to any party. In fact, failing to vacate the order will require the Debtors to re-file a new Chapter 13 case and may effect the disputed valuation of the real property secured by Creditor.

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

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

74. 15-25186-B-13 RONALD/ROBBYN MENDLESKI — COUNTER MOTION TO DISMISS CASE/PROCEEDING
JME-1 Julius M. Engel — 9-21-15 [46]
Thru #75

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 enter an appropriate civil minute order consistent with this ruling.

75. 15-25186-B-13 RONALD/ROBBYN MENDLESKI — MOTION TO CONFIRM PLAN
JME-1 Julius M. Engel — 8-15-15 [28]

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

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

First, the plan payment in the amount of $1,540.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fee is $1,562.00. The plan filed July 16, 2015, does not comply with § 4.02 of the mandatory form plan.

Second, the Debtors have not provided the Trustee with requested pay stubs received in December 2014 as well as pay stubs dated January 1, 2015. Feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(b)(1)(B).

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

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

76. 15-25687-B-13 CORY/SIOUX ENOS
JPJ-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-10-15 [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/s, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors did not appear at the duly noticed first meeting of creditors set for September 3, 2015.

Second, the plan does not provide treatment for the priority claim filed by the Internal Revenue Service in the amount of $4,976.09. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Third, the plan will take approximately 70 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1422(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The plan is underfunded because the plan payment of $4,106.41 will not pay the secured claims and no less than 100% to general unsecured creditors in full.

Fourth, feasibility depends on the granting of a motion to value collateral for Green Tree. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral. Local Bankr. R. 3015-1(j).

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

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

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

77. 15-25687-B-13 CORY/SIOUX ENOS
MDE-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
9-9-15 [18]

Tentative Ruling: The 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 plan does not provide for the curing of the default in the approximate amount of $6,877.53 owed to Bank of New York Mellon ("Creditor"). Creditor's claim is secured by the real property commonly known as 6873 Buena Terra Way, Sacramento, California. Debtors have not satisfied 11 U.S.C. § 1322(b)(5).

Second, the Debtors cannot make payments under the plan pursuant to 11 U.S.C. § 1325(a)(6) once the arrears on Creditor's claim are fully provided for.

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

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

78. 14-20389-B-13 ROBERT/DONNA YOUNG MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria, 8-14-15 [47]

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

The court's decision is to permit the requested modification and confirm the modified plan, provided that the following language is included in the order modifying: (a) § 2.07 shall be modified to remove the current "$0.00" monthly dividend and replace it with a monthly dividend of "$150.00"; (b) the Chapter 13 Trustee shall begin making disbursements pursuant to § 2.07 beginning October 2015.

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

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

79. 15-27196-B-13 RICHARD/ROXANNE ELSAS
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC.
9-21-15 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, Motion to Value 9660 Sandage Ave., Collateral of Real Time Resolutions, Inc. 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 Real Time Resolutions, Inc. at $0.00.

The motion to value filed by Debtors to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Joint Debtor's declaration. Debtors are the owners of the subject real property commonly known as 9660 Sandage Avenue, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of $345,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on September 29, 2015, by Real Time Resolutions, Inc. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $479,000.00.

Creditor's second deed of trust secures a claim with a balance of approximately $54,589.20 according to the Claims Registry. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

80. 15-27467-B-13 CAROL GUENTHER
LBG-2 Lucas Garcia

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
9-24-15 [8]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

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

Carol Guenther ("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 9, 2015, after Debtor was delinquent in payments (Case No. 15-20706, Dkt. 32). 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 was unable to fulfill her duties and obligations in the previous bankruptcy case due to the unforeseen expenses of needing to make repairs to her home caused by flooding. Thus, Debtor's failure to fulfill her duties and obligations resulted from circumstances beyond her control.

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 enter an appropriate civil minute order consistent with this ruling.