

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

November 4, 2015 at 10:00 a.m.

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1. [15-26501](#)-B-13 HILLARY CRINER OBJECTION TO CONFIRMATION OF  
JPJ-1 Scott Hughes PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-8-15 [[21](#)]

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

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

First, the Debtor has not amended her budget to properly account for her new employment. As such, the plan filed August 28, 2015, does not comply with 11 U.S.C. §§ 1325(a)(3) or (6) as the Debtor's Schedule I does not properly account for her current income.

Second, feasibility of the plan cannot be assessed since the Debtor has not provided the Trustee with a copy of a recent pay stub or commission check. Debtor has not complied with § 521(a)(3).

Third, the Debtor is delinquent to the Trustee in the amount of \$512.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,112.00 will also be due. In the event that the Debtor does not make the October 2015 payment prior to disbursement, the Debtor will also be post-petition delinquent to Nationstar Mortgage on the 1st deed of trust in the amount of \$1,732.00 and to Nationstar Mortgage on the 2nd Deed of Trust in the amount of \$441.00. This represents 1 monthly disbursement for each creditor. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 28, 2015, 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.

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**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Debtors' 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 September 25, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

3. [15-25904](#)-B-13 JOEL PEARSON  
JPJ-2 James Keenan

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-22-15 [[17](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The Debtor is not entitled to claim his interest in cash on hand with a total value of \$300.00 as exempt under California Code of Civil Procedure § 706.050. This code is described as the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order.

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

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

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Motion to Confirm 2nd Modified [sic] 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 second 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 September 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

5. [15-27008](#)-B-13 ANDREW SHELTON  
JPJ-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-8-15 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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, although the Debtor failed to appear at the first meeting of creditors set for October 1, 2015, the Debtor appeared at the continued meeting of creditors held on October 29, 2015.

Second, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6) or § 1325(b)(1)(B) until the Debtor has provided the Trustee with the requested pay stubs or a statement regarding the lack of income earned during the time period between August 16, 2015, and September 30, 2015.

The plan filed September 3, 2015, 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.

6. [15-24609](#)-B-13 AMANDA DENTON  
EWV-72 Eric Vandermey

MOTION TO CONFIRM PLAN  
9-22-15 [[36](#)]

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

The Debtor is delinquent to the Trustee in the amount of \$430.00, which represents approximately 0.59 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$730.00 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.

**Tentative Ruling:** The Motion to Confirm Second Modified Chapter 13 Plan Dated September 28th, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan payment in the amount of \$707.00 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 monthly payments plus the Trustee's fee is \$735.27. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, there is a discrepancy as to the remaining amount of the attorney's fees. The Additional Provisions at the fifth paragraph states that the remaining attorney's fees of \$2,404.00 will be paid at \$55.00 per month. According to the Trustee's records, the remaining attorney's fees is \$2,119.58.

Third, the terms for payment of the Debtor's attorney's fees are unclear. At Section 2.06, the plan does not specify a selection as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, 2017.

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. [15-20217](#)-B-13 MICHAEL/ROSE LARIVIERE OBJECTION TO CLAIM OF CAVALRY  
JPJ-2 Mary Ellen Terranella SPV I, LLC, CLAIM NUMBER 1  
**Thru #9** 9-4-15 [[65](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

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

The court's decision is to sustain the objection to Claim Number 1-2 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim Number 1-2. The claim is asserted to be in the amount of \$16,158.14. Objector asserts that the statute of limitations for collection of this debt has expired.

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

The court finds that the statute of limitations for collection of this debt has expired. The documents attached to the proof of claim show that the last payment on the account was made on February 14, 2009, which is more than 4 years prior to the filing of the petition. The statute of limitations commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). The 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. [15-20217](#)-B-13 MICHAEL/ROSE LARIVIERE OBJECTION TO CLAIM OF PERSOLVE,  
JPJ-3 Mary Ellen Terranella LLC, CLAIM NUMBER 7  
9-4-15 [[61](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry Persolve, LLC has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the



objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim Number 7-1 of Persolve, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Persolve, LLC ("Creditor"), Claim Number 7-1. The claim is asserted to be in the amount of \$16,158.14. Objector asserts that the statute of limitations for collection of this debt has expired.

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

The court finds that the statute of limitations for collection of this debt has expired. The documents attached to the proof of claim show that the last payment on the account was made on February 10, 2009, which is more than 4 years prior to the filing of the petition. The statute of limitations commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). The 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. [15-25917](#)-B-13 DAVID TRINH  
JPJ-1 Jasmin Nguyen

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
9-22-15 [[18](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

First, the Debtor is not entitled to claim his interest in Scottrade stock account with a total value of \$159.00 as exempt under California Code of Civil Procedure § 704.070(b)(2). This code is described as paid earnings that can be traced into deposit accounts.

Second, the Debtor may not claim as exempt the entire asset value of \$100.00 in bank accounts with Bank of America and Bank of the West since only 75% of the paid earnings that can be traced into the deposit accounts are exempt. California Code of Civil Procedure § 704.070(b)(2).

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

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

11. [15-24019](#)-B-13 ROY/CHERISE WHITAKER  
RMW-5 Pro Se

MOTION TO CONFIRM PLAN  
9-17-15 [[72](#)]

**Tentative Ruling:** The Motion to Confirm Chapter Modified [sic] 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 Debtors are delinquent to the Trustee in the amount of \$312.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$323.00 will also be due. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan will take approximately 56 months to complete, which is 20 months longer than the proposed duration of payments of 36 months. Pursuant to § 1.03 of the mandatory form plan, monthly payments may only continue for an additional 6 months.

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.

12. [10-42021](#)-B-13 RONALD/KYM BEACH  
Brandon Scott Johnson

MOTION TO VACATE DISMISSAL OF  
CASE  
10-19-15 [[70](#)]

DEBTOR DISMISSED:

08/15/2015

JOINT DEBTOR DISMISSED:

08/15/2015

**Tentative Ruling:** The Motion for Reconsideration was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the Debtors' case. Debtors state that they relied on their attorney, Brandon S. Johnston, who advised them in February 2015 to reduce their monthly payments from \$3,362.00 to \$2,310.00 per month. According to the Debtors, Mr. Johnston had stated that he would file a motion to reduce their monthly plan payments. The Debtors state that they began making payments in the lowered amount of \$2,310.00 per month starting February 2015, had tried numerous times to contact Mr. Johnston, and eventually received the notice of dismissal in September 2015. Debtors thereafter learned that Mr. Johnson had passed away. Debtors assert that Mr. Johnston's advice to lower payments before they had been approved by the court was ill advised. Debtors additionally assert that they had only 9 payments left to complete their bankruptcy. Debtors request to make up the difference in payments and complete their bankruptcy as scheduled. 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 based on Mr. Johnston's ill advice to the Debtors in February 2015 to reduce their monthly payments before the court had either heard or granted such a motion. In fact, the Debtors' motion to modify plan, which included reduction of monthly plan payments, was not heard until August 12, 2015, which the court denied without prejudice. However, the Debtors relied on their attorney's advice and began reducing their payments in February 2015 (Dkt. 70, p. 28). 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 Debtors are only 9 payments away from the completion of their bankruptcy. Vacating the dismissal will allow the Debtors to complete their payments to creditors.

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.

**Tentative Ruling:** The Motion to Confirm Debtor's First Amended Plan Filed on September 23, 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 first amended plan.

First, feasibility of the plan filed September 23, 2015, depends on the granting of a motion to value collateral for the Internal Revenue Service. To date, the Debtor has not filed, set for hearing, and served the respondent creditor and the Trustee a stand-alone motion to value collateral. Local Bankr. R. 3015-1(j).

Second, the Debtor has not provided the Trustee with pay stubs and bank statements for the time period of January 1, 2015, through June 30, 2015. As such, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(b)(1)(B) or §§ 1325(a)(3) or (6).

Third, the Debtor has not provided a detailed accounting of her business expenses in the amount of \$1,200.00 as listed on Line 21 of Schedule J of the petition. As such, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has not yet made any effort to commence making payments in this case based on the Debtor's receipt history. As such, feasibility of the plan cannot be properly assessed pursuant to 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.

14. [15-25328](#)-B-13 MICHAEL/BERNADETTE AMBERS MOTION TO CONFIRM PLAN  
LBG-1 Lucas Garcia 9-15-15 [[27](#)]

**Tentative Ruling:** The Motion to Confirm First Amended Chapter 13 Plan Dated September 15, 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 first amended plan.

The plan payment in the amount of \$4,650.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class1 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 monthly amounts plus the Trustee's fee is \$4,756.00. The plan filed September 15, 2015, does not comply with Section 4.02 of the mandatory form plan.

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.

15. [15-26428](#)-B-13 BRADLEY JOHNSON  
JPJ-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-8-15 [[18](#)]

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

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

First, the Debtor is delinquent to the Trustee in the amount of \$360.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$360.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Schedule I of the petition states that the Debtor owes a domestic support obligation but the Debtor has not provided the Trustee with a Domestic Support Obligation Checklist. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

The plan filed August 27, 2015, 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.

16. [10-49129](#)-B-13 HERMAN/CYNTHIA BARNES  
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF  
CONTRA COSTA FEDERAL CREDIT  
UNION  
9-24-15 [[77](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Debtor's 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 Contra Costa Federal Credit Union at \$0.00.

The motion to value filed by Debtors to value the secured claim of Contra Costa Federal Credit Union ("Creditor") is accompanied by Debtor Herman Barnes' declaration. Debtors are the owners of the subject real property commonly known as 161 Rodeo Court, Vallejo, California ("Property"). Debtors seek to value the Property at a fair market value of \$200,000.00 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. 3 filed on November 29, 2010, by Contra Costa Federal Credit Union



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 \$280,758.00. Creditor's second deed of trust secures a claim with a balance of approximately \$84,271.31. 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.

17. [15-25730](#)-B-13 JEFFREY/KELLY ERCOLINI MOTION TO APPROVE LOAN  
PGM-1 Peter Macaluso MODIFICATION  
9-30-15 [[30](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Motion for Order Approving Trial 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 seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has offered Debtors a trial modification that states that after all trial period payments are timely made and the Debtors have continued to meet all eligibility requirements of the modification program, the mortgage will be permanently modified. The Debtors are to make 3 payments in the amount of \$2,029.99 beginning September 1, 2015, with the last payment under the trial loan modification to be made by December 1, 2015. The modification does not affect the distribution to unsecured creditors who were originally to be paid no less than 0.00% in the original Chapter 13 plan.

The motion is supported by the Declaration of Jeffrey Ercolini and the Declaration of Valerie Conner. The Declarations affirm Debtors' desire to obtain the post-petition financing. Although the Declarations do not state the Debtors' ability to pay this claim on the modified terms, the modification will reduce the monthly mortgage payment from the current \$2,250.00 per month to \$2,029.99 per month (Dkts. 5, 40).

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.

18. [15-26834](#)-B-13 CLYDE HUGHES  
JPJ-1 Peter Macaluso

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR AMENDED MOTION  
TO DISMISS CASE  
10-9-15 [[24](#)]

**Tentative Ruling:** The Trustee's Amended 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, although the Debtor failed to appear at the first meeting of creditors set for October 1, 2015, the Debtor appeared at the continued meeting of creditors held on October 29, 2015.

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

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

Fourth, the Debtor is delinquent to the Trustee in the amount of \$110.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$110.00 will also be due. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed September 8, 2015, 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.

19. [15-25535](#)-B-13 JORGE/MARTHA HERNANDEZ MOTION TO CONFIRM PLAN  
HLG-2 Kristy Hernandez 9-15-15 [[32](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Motion to Confirm Debtor's [sic] First Amended Plan Filed on September 23, 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 September 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

**Tentative Ruling:** The Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy 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 provides for payments to commence in October 2015 in the amount of \$200.00 per month. However, the Debtor has not made a payment since July 2, 2015. The plan cannot be confirmed unless the payment due by October 25, 2015, is timely made.

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

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

21. [15-27036](#)-B-13 PATRICK/PENSRI MAMMOLITE  
JPJ-1 Dale Orthner

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-8-15 [[18](#)]

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

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

The Debtors have not amended Schedule I of the petition to reflect the Debtor's changed employment status and the Joint Debtor's disability pay in addition to her employment income. As such, feasibility of the plan cannot be assessed pursuant to 11 U.S.C. §§ 1325(a)(3) and 1325(a)(6).

The plan filed September 4, 2015, 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.

22. [15-26939](#)-B-13 JUANA CABRERA AND CUONG OBJECTION TO CONFIRMATION OF  
JPJ-1 LE PLAN BY JAN P. JOHNSON, TRUSTEE  
Peter Macaluso 10-8-15 [[15](#)]

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

The court's decision is to sustain the objection.

First, the Debtors have not provided the Trustee with a complete pay summary of all bank statements and pay stubs received between March 1, 2015, and August 31, 2015. Additionally, the Trustee has not received the requested bank statements for the period of August 6, 2015, through August 31, 2015. Feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(3) or 1325(b)(1)(B).

Second, the Debtors have not provided the Trustee with a broker's price opinion (BPO) of the residence located at 705 Alice Rae Circle, Galt, California. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to the Trustee's preliminary investigation, the total amount of non-exempt property in the estate would be approximately \$15,901.73 after accounting for the costs of sale of the Debtors' residence, existing liens, and eligible exemptions. The total amount that will be paid under Debtors' proposed plan to unsecured creditors is only \$4,995.06.

Fourth, the Debtors have an overwithholding of taxes of approximately \$650.00 per month that is not accounted for in the Debtors' budget. Since these funds do not appear to be reasonable and necessary to the Debtors' monthly budget, these funds should be paid into the plan in order to repay the creditors in this case. The plan filed September 1, 2015, does not appear to comply with 11 U.S.C. § 1325(a)(3) as the Debtors do not appear to be putting forth their best efforts to repay their creditors.

The plan filed September 1, 2015, 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.

**Tentative Ruling:** The Debtor's 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 by the Chapter 13 Trustee and Sukhbir Kahlon, Amritpal Kahlon, and Satwinder Singh the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the plan filed September 3, 2015.

First, the Debtor failed to appear at the first meeting of creditors set for September 17, 2015, as well as the continued meeting of creditors held on October 15, 2015.

Second, the Debtor is delinquent to the Trustee in the amount of \$350.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$175.00 will also be due. The Debtor has not made any plan payments since this petition was filed on July 23, 2015. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with copies of certain items including, but 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 and permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Fourth, although Sukhbir Kahlon, Amritpal Kahlon, and Satwinder Singh ("Creditors") assert that they have a priority claim that is not listed in the Debtor's Schedule E, the Creditors have submitted no evidence, declarations, or exhibits supporting their assertion.

Fifth, as stated on the record on October 28, 2015, this case is to be dismissed if not converted by November 9, 2015.

For the first, second, and third reasons stated above, 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.



24. [12-40851](#)-B-7 SALLY TOON  
JPJ-2 Mikalah Liviakis

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
9-29-15 [[39](#)]

CASE CONVERTED: 10/21/2015

**Final Ruling:** No appearance at the November 4, 2015 hearing is required.

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

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Motion to Value the Secured Claim of Wang Yang Enterprise 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 Wang Yang Enterprise LLC at \$0.00.

The motion to value filed by Debtor to value the secured claim of Wang Yang Enterprise LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 10803 Coloma Road #2, Rancho Cordova, California ("Property"). Debtor seeks to value the Property at a fair market value of \$72,971.00 (as stated in the declaration and not \$86,956.61 as stated in the motion) 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.

#### **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 18, 2015, by Wang Yang Enterprise LLC 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 \$86,956.61. Creditor's second deed of trust secures a claim with a balance of approximately \$69,252.46. 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.

**Tentative Ruling:** The Motion to Confirm Debtor's First Amended Plan filed on September 23, 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 first amended plan.

First, the claim of Wells Fargo is misclassified as a Class 1 claim because it is not a claim that will receive ongoing monthly contractual payments in accordance with 11 U.S.C. § 1322(b)(5). Because the Additional Provisions specifically state that Wells Fargo will receive "adequate protection" payments of \$1,920.00 per month pending the approval of a loan modification instead of the ongoing monthly contractual payments, the plan modifies the claim which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). For avoidance of doubt, the court will not confirm a plan that modifies a home loan by compelling the secured lender to accept an "adequate protection" payment in lieu of the regular monthly mortgage payment without evidence that the secured lender has consented to the modification of its home loan and agreed to accept a reduced or modified payment in the form of an "adequate protection" payment.

Second, feasibility of the plan depends on the Debtor obtaining a loan modification with Wells Fargo; however, there is no evidence that the lender has consented to or is considering a loan modification. The plan may not impose a modification of the secured claim of Wells Fargo unless the creditor has expressly agreed to this.

Third, the Debtor has not yet made any effort to commence making payments in this case based on the Debtor's receipt history. As such, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6).

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

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

27. [15-25453](#)-B-13 REX GARDNER MOTION TO VALUE COLLATERAL OF  
DEF-1 David Foyil BANK OF AMERICA, N.A.  
**Thru #28** 9-16-15 [[31](#)]

**Final Ruling:** No appearance at the November 4, 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). However, Debtor failed to serve Bank of America, N.A. at the proper address. The address utilized by the Debtor does not appear on the California Secretary of State website or the FDIC website. In fact, it appears that the debtor served a local branch of a bank located inside a strip mall somewhere in Placerville, California. Even assuming the service address is correct (which it is not), the manner of service is not. Although the related certificate of service states that service was by certified mail, service was not directed to an officer or director of the institution as require by Fed. R. Bankr. P. 7004(h). In sum, the Debtor has not provided any evidence that the address it utilized or the manner of service is proper.

The court's decision is to deny without prejudice the motion to value collateral of Bank of America, N.A.

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

28. [15-25453](#)-B-13 REX GARDNER MOTION TO CONFIRM PLAN  
DEF-2 David Foyil 9-16-15 [[24](#)]

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

Feasibility of the plan filed September 16, 2015, depends on the granting of a motion to value collateral of Bank of America for a 2nd deed of trust on the Debtor's residence. The motion to value the collateral was heard at Item #27 and denied without prejudice due to improper service. The plan cannot be confirmed unless the motion to value collateral is granted.

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.

29. [15-26154](#)-B-13 MARGARET DAVIDSON CONTINUED OBJECTION TO  
JM-1 Michael O'Dowd Hays CONFIRMATION OF PLAN BY  
**Thru #31** SPRINGLEAF FINANCIAL SERVICES,  
INC.  
9-16-15 [[16](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was continued from October 14, 2015. The objection was filed at least 14 days prior to the original hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). No written reply has been filed to the objection.

The court's decision is to overrule the objection.

Feasibility of the plan filed August 1, 2015, depends on the granting of a motion to value collateral for Springleaf Financial Services, Inc. ("Creditor") for a 2000 Ford Taurus. As stated at Item #31, the Debtor and Creditor have entered into a stipulation agreeing to the value of the collateral, interest, and monthly dividend.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 1, 2015, is confirmed.

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

30. [15-26154](#)-B-13 MARGARET DAVIDSON CONTINUED OBJECTION TO  
JPJ-1 Michael O'Dowd Hays 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 continued from October 14, 2015. The objection and conditional motion were filed at least 14 days prior to the original 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 has filed a written reply to the objection.

The court's decision is to overrule the objection for reasons stated at Item #29 and because the Chapter 13 Trustee's issues have been resolved as stated at the hearing held on October 14, 2015, specifically that the Trustee was provided with evidence of the Debtor's social security number.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed August 1, 2015, is confirmed.

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

31. [15-26154](#)-B-13 MARGARET DAVIDSON MOTION TO VALUE COLLATERAL OF  
MOH-2 Michael O'Dowd Hays SPRINGLEAF FINANCIAL SERVICES,  
INC.  
10-13-15 [[42](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Debtor having filed a Notice of Withdrawal of the Debtor's Motion to Value Collateral of Springleaf Financial Services, Inc. due to a stipulation having been filed, signed by the attorneys for both parties, and agreeing to the value of the collateral, interest and monthly dividend, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of

Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

32. [15-21659](#)-B-13 CHARLES HUGHES CONTINUED MOTION TO CONFIRM  
CAH-1 Peter Macaluso PLAN  
**Thru #33** 8-7-15 [[62](#)]

**Tentative Ruling:** The Continued 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.

This matter was continued from October 7, 2015, in order for the Debtor to become current on plan payments. The second amended plan will be confirmed provided that the Debtor is current on plan payments.

Provided that the aforementioned is 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.

33. [15-21659](#)-B-13 CHARLES HUGHES CONTINUED MOTION TO DISMISS  
JPJ-2 Peter Macaluso CASE  
7-9-15 [[56](#)]

**Tentative Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Counter Motion to Conditionally Dismiss Case, the counter motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar. However, the Trustee does not withdraw its Opposition to the motion to confirm plan.

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



34. [15-22464](#)-B-13 BRANT POWNER  
RAH-2 Richard Hall

OBJECTION TO CLAIM OF  
DEPARTMENT OF TAXATION, CLAIM  
NUMBER 8  
9-1-15 [[51](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Objection to Claim No. 8 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to overrule the objection to Claim Number 8 of Commonwealth of Virginia, Department of Taxation.

Brant Powner ("Objector"), requests that the court allow the claim of Commonwealth of Virginia, Department of Taxation ("Creditor"), Claim Number 8, as an unsecured claim allowed in the amount of \$0.00. The court construes this as an objection to the claim stated in the proof of claim and the amount of the stated claim. The Creditor's proof of claim states that the claim has priority status in the amount of \$20,590.46. Objector asserts that the claim and the attachments appended to the claim do not sufficiently authenticate and substantiate the asserted balance and class of the underlying debt. Specifically, the Debtor objects to the claim because Creditor relies on a "substitute for return" and Debtor asserts (without any supporting evidence) that it owed no taxes for the periods in question asserted by the Creditor.

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 Objector has not satisfied its burden of overcoming the presumptive validity of the claim. The Objector has not presented substantial and factual basis to overcome the prima facie validity of the proof of claim. Objector merely asserts that he does not owe taxes for the years 2005, 2006, and 2007, and that the Creditor's substitute to return (Claim 8, p. 3) cannot be relied upon. The Objector's assertions that he owes no taxes are insufficient to overcome the presumptive validity of the claim. Local Bankr. R. 3007-1(a) ("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."). The Objector has also failed to demonstrate how the use of a summary attached to a proof of claim defeats the claim's prima facie validity. See *Heath v American Express Travel Related Svc. Co., (In re Heath)*, 313 B.R. 424, 432-433 (9th Cir. BAP 2005).

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

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

**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 first meeting of creditors set for October 8, 2015, as required pursuant to 11 U.S.C. § 343.

Second, feasibility of the plan depends on the granting of a motion to value collateral for Chase Auto Finance. To date, the Debtors have not filed, set for hearing, or served on the respondent creditor and the trustee a stand-alone motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Third, there is a discrepancy in the Debtors' listed income in the petition. Form 22C-1 states that the current income is approximately \$37,260.00 per year but Schedule I lists an income that calculates to \$81,000.00 per year, which is greater than the median family income for a household size of 4 at \$79,418.00 and would require the Debtors to complete Form 22C-2. Without further information or explanation as to this discrepancy, it cannot be assessed as to whether the plan complies with 11 U.S.C. § 1325(b)(1)(B).

Fourth, Schedules I and J both state that the Debtors' income and expenses are projected since the Debtors have recently moved. Since the Debtors failed to appear at the meeting of creditors, the Trustee was unable to question the Debtors about possible new income and expenses. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the plan payment of \$575.00 does not equal the aggregate of the Trustee's fees, the monthly payment for administrative expenses, and monthly disposable dividends payable on account of Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is \$579.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed September 16, 2015, 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.

36. [14-32370](#)-B-13 LYNETTE HENRY  
JPJ-4 Mary Ellen Terranella

OBJECTION TO CLAIM OF MIDLAND  
CREDIT MANAGEMENT, INC., CLAIM  
NUMBER 10  
9-4-15 [[34](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim of Midland Credit Management, Inc. 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 10-1 of Midland Credit Management, Inc. and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Midland Credit Management, Inc. ("Creditor"), Claim Number 10-1. The claim is asserted to be unsecured in the amount of \$890.86. Objector asserts that the statute of limitations for collection of this debt has expired.

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

The court finds that the statute of limitations for collection of this debt has expired. The documents attached to the proof of claim show that the last payment on the account was made on March 2, 2010, which is more than 4 years prior to the filing of the petition. The statute of limitations commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). The 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.

**Tentative Ruling:** The Debtors' Motion to Confirm First Amended Plan Filed September 16, 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 first amended plan.

The Debtors have not submitted to the court an order on the motion to value collateral, thus constituting an unreasonable delay that is prejudicial to creditors.

Additionally, since Travis Credit was granted relief from the automatic stay on August 12, 2015, pursuant to Section 5.03 of the plan, the Trustee shall make no further payments to the secured creditor.

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.

38. [15-26973](#)-B-13 STEVEN RUTHENBECK  
JPJ-1 Matthew Eason  
**Thru #39**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON, TRUSTEE  
10-8-15 [[16](#)]

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

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

The claim of Franchise Tax Board ("FTB") is misclassified as a Class 1 claim. The Debtors stated at the meeting of creditors on October 1, 2015, that the claim of FTB would in fact mature within the life of the plan, which would require the claim to be classified as a Class 2 claim. Until this issue is resolved, feasibility of the plan cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(4) or § 1325(a)(6).

The plan filed September 2, 2015, 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.

39. [15-26973](#)-B-13 STEVEN RUTHENBECK  
RDW-1 Matthew Eason

OBJECTION TO CONFIRMATION OF  
PLAN BY CAM IX TRUST  
10-8-15 [[19](#)]

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

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

First, the Debtor has not demonstrated that he will be able to make all payments under the plan and to comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). The Debtor's plan relies on the contributions from his father in order to fund the payments in the plan. While such family contributions are not prohibited, the Debtor has not provided any evidence in support of the contribution. See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

Second, the Debtor's plan proposes to liquidate one or more of his interests in real property to make a lump sum payment of \$83,100.00 in month 24. The ability to fund the plan in month 24 is speculative, at best.

Third, the Debtor's plan modifies the claim of CAM IX Trust, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2). The Declaration of Karin Murphy states that the Debtor has pre-petition arrears owing of approximately \$54,788.27 as of the date of filing; this amount includes 20 monthly payments in the amount of \$2,397.03 each and late charges. Debtor's plan proposes to pay only \$53,000.00.

The plan filed September 2, 2015, 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.

40. [15-25582](#)-B-13 ASHWANI/ASHWANI MAYER CONTINUED STATUS CONFERENCE RE:  
[15-2154](#) AMENDED COMPLAINT  
MAYER ET AL V. WELLS FARGO 9-12-15 [[18](#)]  
BANK, N.A.

**Thru #41**

**Tentative Ruling:** This matter will be continued to November 18, 2015, at 10:00 a.m. to be heard in conjunction with the Motion for Summary Judgment.

41. [15-25582](#)-B-13 ASHWANI/ASHWANI MAYER MOTION FOR SUMMARY JUDGMENT  
[15-2154](#) SBM-1 10-2-15 [[28](#)]  
MAYER ET AL V. WELLS FARGO  
BANK, N.A.

**Tentative Ruling:** The court issues no tentative ruling in this matter. The court will hear limited argument on the assigned hearing date. This matter will then be continued to November 18, 2015, at 10:00 a.m. The court will either announce its decision on, or file a written decision before, the continued hearing date. If a written decision is filed, the court will vacate the continued hearing date and no appearance at that hearing will be necessary.

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on September 11, 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.

43. [14-32190](#)-B-13 JUAN/PATRICIA VIGIL  
JPJ-2 Mario Banco

OBJECTION TO CLAIM OF MIDLAND  
CREDIT MANAGEMENT, INC., CLAIM  
NUMBER 5  
9-4-15 [[41](#)]

**Final Ruling:** No appearance at the November 4, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim of Midland Credit Management, Inc. 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 5-1 of Midland Credit Management, Inc. and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Midland Credit Management, Inc. ("Creditor"), Claim Number 5-1. The claim is asserted to be unsecured in the amount of \$1,258.25. Objector asserts that the statute of limitations for collection of this debt has expired.

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

The court finds that the statute of limitations for collection of this debt has expired. The documents attached to the proof of claim show that the last payment on the account was made on October 8, 2008, which is more than 4 years prior to the filing of the petition. The statute of limitations commencing collection actions on debts of this type is 4 years pursuant to California Code of Civil Procedure § 337. A state statute of limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1). The 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.



44. [15-26694](#)-B-13 BOUNTHEU THIENPHETH  
JPJ-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON, TRUSTEE  
10-8-15 [[25](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(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 dismiss the objection as moot, the court having granted the Chapter 13 Trustee's motion to dismiss case on October 28, 2015.

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

45. [15-26796](#)-B-13 JOHN DICKERSON OBJECTION TO CONFIRMATION OF  
JPJ-1 Rebecca Iherijika PLAN BY JAN P. JOHNSON, TRUSTEE  
**Thru #46** 10-8-15 [[22](#)]

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

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

First, the plan payment in the amount of \$714.00 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 monthly payments plus the Trustee's fee is \$843.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Debtor appears to have understated income at Line 2 by \$500.00 and to have overstated deductions at Line 37 in the amount of \$5,573.81. The Debtor's correct monthly disposable income is or should be \$909.95 and the Debtor must pay no less than \$54,597.00 to general unsecured creditors. The Debtor's plan proposes to pay only \$23,806.65 to general unsecured creditors.

Third, the exemptions provided under California Code of Civil Procedure § 703.140(b) are only applicable if both spouses effectively waive, in writing, the right to claim, during the period that this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under California Code of Civil Procedure § 703.140(b). The Debtor has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2).

The plan filed August 28, 2015, 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.

46. [15-26796](#)-B-13 JOHN DICKERSON OBJECTION TO CONFIRMATION OF  
MDE-1 Rebecca Iherijika PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
9-23-15 [[14](#)]

**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 sustain the objection and deny confirmation of the plan.

First, the value of the personal property commonly described as a 2013 Toyota Tundra (VIN ending in-40164) ("Vehicle") is less than the amount allowed by such claim. The Debtor has provided for Toyota Motor Credit Corporation ("Creditor") as a Class 2 claim

with an amount claimed by the Creditor of \$28,983.00. However, based on the Creditor's Claim Number 7, the claim may not be less than \$30,262.75. This is a "910 claim." The Debtor's plan does not comply with 11 U.S.C. § 1325(a)(5)(B).

Second, the amount of payments to Creditor are less than the amount sufficient to provide the Creditor adequate protection during the period of the plan. The Debtor provides an interest rate of 4.75% on the Creditor's secured claim. The original interest rate on the Creditor's claim was 8.99% but the Creditor proposes an interest rate of no less than 6.25% (3.35% prime rate + 3% risk adjustment).

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the Debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate is currently 3.25%. As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The Debtor's proposed rate of 4.75% gives a 1.5% upward adjustment. This is not enough. This is the second bankruptcy case filed by the Debtor. The plan proposes to pay Creditor over 60 months. Given these facts, the risk to Creditor posed by a plan default are considerable and justify the maximum 3% upward adjustment in order to comply with section 1325(a)(5)(B)(ii). As such, the court agrees that the 6.25% interest rate to be paid on the claim is appropriate.

The plan filed August 28, 2015, 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.

47. [15-26598](#)-B-13 JOSHUA/KIMBERLY PAULSON OBJECTION TO CONFIRMATION OF  
JPJ-1 Mark Wolff PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-8-15 [[30](#)]

**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 October 27, 2015. The confirmation hearing for the amended plan is scheduled for December 9, 2015. The earlier plan filed August 28, 2015, is not confirmed.

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