UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 18, 2015 at 10:00 a.m.

1.	15-24602-B-13 ELG-2	RAFAEL/MARGARITA GUTIERREZ Julius Engel	MOTION TO CONFIRM PLAN 10-2-15 [44]

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

The court's decision is to not confirm the amended plan filed October 2, 2015.

First, the plan will take approximately 77 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The overextension of the plan is caused by timely filed general unsecured proof of claims that were not previously scheduled.

Second, the Debtors are delinquent in the amount of $154.00, which represents approximately 0.07 plan payment. The Debtors have not carried their 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.

2.	13-28703-B-13 JPJ-1	FRANCIS/HEATHER KOVAC Michael David Croddy	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 10-13-15 [37]

DEBTOR DISMISSED: 11/13/15

Final Ruling: No appearance at the November 18, 2015 hearing is required.

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

3.	15-27104-B-13 JPJ-1	VALERIE SMITH Julius M. Engel	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 10-21-15 [15]

Final Ruling: CONTINUED TO 11/25/15 AT 10:00 A.M. TO BE HEARD IN CONJUNCTION WITH CHAPTER 13 TRUSTEE'S MOTION TO DISMISS.

4. 12-22007-B-13 JEANNINE GRUBB MOTION TO MODIFY PLAN
SJS-2 Scott M. Johnson 10-6-15 [41]

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.

First, the Debtor is delinquent to the Trustee in the amount of $1,645.00, which represents approximately 1 plan payment under the terms of the modified plan filed October 6, 2015. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $1,645.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, and monthly dividends payable on account of Class 1 arrearage claims. The aggregate of monthly amounts plus the Trustee's fee is $1,671.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan will take approximately 71 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, there is a discrepancy in the post-petition arrears owed to Ocwen Loan Servicing. The plan filed October 6, 2015, states that the post-petition arrears to Ocwen Loan Servicing are $2,787.56 but the Trustee's records show that the actual post-petition arrears are $5,575.12 for the months of June, August, September, and October 2015.

Fifth, the plan filed October 6, 2015, does not account for the paid claim of post-petition arrears in the amount of $5,575.12 that was included in the prior confirmed plan filed May 7, 2014. While the claim has been paid in full, the modified plan must account for this claim to match the Trustee's records for the monies paid to this creditor.

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.

5. 15-26907-B-13 WILLIAM DOTY
JPJ-1 R. Kenneth Bauer

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-21-15 [20]

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

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 November 12, 2015. The earlier plan filed September 15, 2015, is not confirmed.

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

6.	13-28709-B-13 SJS-3	BETHANY SANDERS Scott M. Johnson	OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 2 9-23-15 [72]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Debtor's Objection to Claim 2-1 of the Internal Revenue Service 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 2-1 of Internal Revenue Service.

Bethany Sanders ("Objector"), requests that the court disallow the claim of Internal Revenue Service ("IRS"), Claim Number 2-1. The claim is asserted to be priority in the amount of $3,711.10. Objector asserts that the IRS is incorrect in its claim that the Debtor did not file a 2012 federal income tax return. Debtor states that she filed her 2012 federal income tax return and has provided a signed, redacted copy of the 2012 federal income tax return (Dkt. 75, Exh. B). Debtor asserts that she instead owes approximately $1,339.00 in priority taxes to the IRS.

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 satisfied her burden of overcoming the presumptive validity of the claim. The Objector has presented a signed, redacted copy of her 2012 federal income tax return. The 2012 federal income tax return shows that the amount owed to the IRS is $1,339.00. The Debtor has overcome the prima facie validity of the proof of claim.

Based on the evidence before the court, the Creditor's claim is allowed in the amount of $1,339.00 as a priority claim. The objection to the proof of claim is sustained.

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

7. 10-33911-B-13 VIVIENNE BOLLIER
CA-3 Michael David Croddy

MOTION TO VALUE COLLATERAL OF NATIONSTAR MORTGAGE, LLC
11-4-15 [52]

CASE CLOSED: 10/27/2015
CASE REOPENED: 11/06/2015

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

The court's decision is to value the secured claim of Nationstar Mortgage, LLC at $0.00.

The motion to value filed by Debtor to value the secured claim of Nationstar Mortgage, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3406 Night Star Court, Antelope, California ("Property"). Debtor provides the Declaration of Steve Becker, a licensed real estate broker, mortgage broker, building contractor, and engineer with over 30 years of experience in the construction and real estate industries, who values the Property between $225,000.00 and $235,000.00. Debtor seeks to value the Property at a fair market value of $225,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $298,614.00. Creditor's second deed of trust secures a claim with a balance of approximately $48,605.00. Although the Debtor and Becker each provide slightly different values for the Property, utilizing even the upper bound value at $235,000.00 results in the Creditor's claim being completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no 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.

8. 15-24112-B-13 TAMRA DELELLO MOTION TO CONFIRM PLAN
FHS-1 Frederick H. Schill 9-29-15 [34]

Tentative Ruling: The Motion to Confirm First [Amended] Chapter 13 Plan (Dated 8/14/15) has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Debtor's motion to confirm amended plan requests that the court confirm the plan filed May 21, 2015, or the plan filed August 14, 2015. However, the plan filed May 21, 2015, was previously deemed not confirmable in the court's civil minute order entered on September 10, 2015. Instead, the amended plan dated August 15, 2015, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

9. 15-21714-B-13 ANDRE/VONETTA HUDDLESTON MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 9-24-15 [31]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated September 24, 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 plan will take approximately 77 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The overextension is due to a discrepancy in the arrears owed to Wells Fargo Bank.

Second, Debtors have not demonstrated their ability to make the increased plan payments in the amount of $2,757.95 beginning in month 7 of the plan and continuing for the remaining life of the plan. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Third, the Debtors have not provided the Trustee with requested bank statements and statements from agencies related to the Debtors' income received from cash aid, CalFresh, and California state disability for the 60-day period preceding the filing of the case. The Debtors have not complied with 11 U.S.C. § 521(a).

Fourth, the Debtors have not provided the Trustee with the complaint or any documentation of the active worker's compensation lawsuit listed on Debtor's Statement of Financial Affairs Question #4. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fifth, the Debtors have not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to the $100.00 in income from rental property or operating a business as listed in Schedule I. Feasibility of the plan cannot be assessed pursuant to 11 U.S.C. §§ 1325(a)(3) or (6).

Sixth, feasibility cannot be properly assessed pursuant to 11 U.S.C. § 1325(a)(6) because the attorney's fees are not listed in their entirety in Section 2.06.

Seventh, the Debtors are delinquent to the Trustee in the amount of $2,575.95, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the amended plan complies with 11 U.S.C. § 1325(a)(6).

Eighth, the amended plan does not specify a cure of the post-petition arrearage owed to America's Servicing Company totaling $1,862.54, including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Ninth, the plan payment in the amount of $2,747.95 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 amounts plus the Trustee's fee is $3,233.00. The plan 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.

10. 13-22923-B-13 JPJ-4 — RUDY HEURTELOU AND WENDY LAU — Peter G. Macaluso — MOTION TO MODIFY PLAN — 10-14-15 [194]

Tentative Ruling: The Trustee's Motion for Post-confirmation Modification of the Chapter 13 Plan has been set for hearing on the 35days' 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.

In the Trustee's reply dated November 6, 2015, in support of its motion to modify plan, the Trustee acknowledged that the Debtors do not appear to be able to maintain monthly payments of $4,757.00 moving forward for the remaining life of the plan as originally proposed in the Trustee's motion to modify plan. The Trustee originally proposed the increased payments since Debtor Rudy Heurtelou had become employed on July 20, 2015, and his income had increased by approximately $5,220.36 per month ($1,792.59 per week in net pay multiplied by 4 weeks equals $7,170.36 per month in net pay versus $1,950.00 per Schedule I). However, as stated in Debtors' opposition and acknowledged in the Trustee's reply, this employment was for the duration of approximately 2 months and ended in September 30, 2015. As such, the Debtors do not appear to be able to make sustained monthly payments of $4,757.00 as proposed in the Trustee's motion to modify plan.

Nonetheless, it does not appear that the Debtors are putting forth their best efforts to repay their creditors. The Debtors have not explained why funds from Debtor's temporary employment went toward Debtors' mortgages or why the mortgages were delinquent since they are already provided for to be paid in the Debtors' budget. Additionally, Debtors' bank statements from June, July, and August 2015 show that the Debtors have made purchases for entertainment, club memberships, and Hawaiian Airline tickets that exceed their projected budget for such items. The Debtors assert in their Declaration that they are paying their disposable income to their creditors to the best of their ability and that they cannot increase plan payments. However, the Debtors' recent spending habits show otherwise.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. Furthermore, the Debtors shall notify the Trustee of any change in employment or income within 7 days of the change. If the Debtors fail to do so, the Trustee may convert or dismiss the case on an ex parte application.

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

11. 14-25625-B-13 DOUGLAS THURSTON
HSM-1 Catherine King

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-13-15 [123]

SHEILA GILDEA VS.

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

12. 12-27226-B-13 ISABEL DEMESA MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 10-6-15 [31]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 6, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on October 6, 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.

13. 15-26428-B-13 BRADLEY JOHNSON
JPJ-1 Peter G. Macaluso

CONTINUED 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 originally 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. 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.[1]

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.

[1] The Debtor's ex-spouse, Laurie Johnson, has also filed an objection to confirmation of Debtor's plan. As the court previously stated on the record on November 4, 2015, the court will consider that objection because it relates to a domestic support obligation owed by the debtor. This is a priority claim that is not – and must be – provided for in the plan before the plan may be confirmed.

14. 15-25730-B-13 JEFFREY/KELLY ERCOLINI MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 10-6-15 [36]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Motion to Confirm Debtors' First Amended Plan Filed on October 6, 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 October 6, 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.

15. 15-26933-B-13 PETE GARCIA
JPJ-1 Peter G. Macaluso
Thru #16

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-21-15 [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 does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Debtor has claimed an interest in rental properties located at: (1) 2870 26th Avenue, Sacramento, California with a value of $162,234.00 and (2) 8295 Florintown Way, Sacramento, California with a value of $181,739.00, both exempted under 11 U.S.C. § 522(b)(3)(B). California has opted out of the federal exemptions and has elected state exemptions for its citizens pursuant to California Code of Civil Procedure § 703.130(a). The Debtor has not cited any authority supporting that he is entitled to an exemption under 11 U.S.C. § 522(b)(3)(B). And even assuming that § 522(b)(3)(B) could somehow be applicable, the Debtor has not shown that his claimed joint tenancy interest in the properties is exempt from process under applicable nonbankruptcy law. 11 U.S.C. § 523(b)(3)(B).

Second, feasibility depends on the granting of a motion to value collateral of CalFHA Mac. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion and the hearing on the valuation must be concluded before or in conjunction with the confirmation of the plan. To date the Debtor has not filed, set for hearing, or served on the respondent creditor and the trustee a motion to value the collateral.

Third, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's net income of $1,800.00 from rental property listed on Schedule I.

The plan filed September 10, 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.

16. 15-26933-B-13 PETE GARCIA
MDE-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
10-22-15 [25]

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 plan does not provide for the curing of the default on the claim of Wells Fargo, N.A. ("Creditor") pursuant to 11 U.S.C. § 1322(b)(5). Creditor's claim is secured by real property commonly known as 6573 Park Riviera Way, Sacramento,

California. The arrearage on the claim is in the amount of $10,068.10 as indicated in Proof of Claim Number 1. The Debtor's plan only provides for arrears in the amount of $7,500.00, a difference of $2,568.10.

Second, the plan proposes monthly payments of $1,545.00 for 60 months but this amount is insufficient to fund the plan once the arrears on Creditor's claim, an additional $2,568.10, are fully provided for. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The plan filed September 10, 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.

17. 15-26834-B-13 CLYDE HUGHES
JPJ-1 Peter G. Macaluso

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 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.

This matter was continued from November 4, 2015, due to the Debtor's delinquency to the Trustee. All other objections raised by the Trustee - specifically appearance at the continued 341 meeting of creditors, providing the Trustee with a copy of an income tax return for the most recent tax year a return was filed, and providing the Trustee with copies of payment advices received within the 60-day period prior to the filing of the petition - were resolved as stated by the Trustee on the record at the November 4, 2015, hearing.

Provided that the Debtor has cured the delinquency, the court shall find that the Debtor has carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6) and will confirm the plan filed September 8, 2015.

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

18.	15-27036-B-13 JPJ-1	PATRICK/PENSRI MAMMOLITE Dale A. Orthner	CONTINUED 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.

This matter was continued from November 4, 2015, because Schedule I was missing an attachment. On November 11, 2015, the Debtors filed an amended Schedule I with a profit and loss statement attached. The court's decision is to overrule the objection and deny without prejudice the motion to dismiss.

The plan filed September 4, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

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

19. 11-20437-B-13 GREGORY/ROXANNE ROBERTSON MOTION TO APPROVE SHORT SALE
DBJ-8 Douglas B. Jacobs 10-8-15 [106]

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors Gregory Robertson and Roxanne Robertson propose to short sell the property described as 3074 Snowbird Drive, Chico, California ("Property"). The Debtors value the Property at $170,000.00. There currently exists a first deed of trust against the Property in the amount of $174,000.00 owed to Bank of America. Thus, the Property is under secured and there is no equity available for the either the Debtors or the bankruptcy estate.

The proposed purchasers of the property Andy Keller and Heather Keller ("Buyers") have agreed to purchase the Property for $180,000.00. The Debtors provide a copy of the residential purchase agreement as an exhibit (Dkt. 109, Exh. A). The Debtors assert that the short sale will have no effect on the administration of the estate and will not affect any payments being made to creditors holding general unsecured claims. Additionally, Debtors state that neither they nor the bankruptcy estate will receive any money from the sale or incur any liability.

Although Debtors state in their declaration that Bank of America has agreed to the purchase price, Debtors provide no evidence that Bank of America has approved the short sale. Additionally, a review of the proof of service shows that Bank of America was not served at the correct address nor served by certified mail as required for FDIC insured institutions under Bankruptcy Rule 7004(h).

Based on the evidence before the court, the motion is denied without prejudice.

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

20. 15-26339-B-13 WILLIAM/NANCIE DUNHAM MOTION TO CONFIRM PLAN
CK-1 Catherine King 9-30-15 [27]

Tentative Ruling: The Motion to Confirm Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, 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 depends on the granting of a motion to value collateral for US Bank for a 2005 Sun Tracker fishing boat. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor or the Trustee a stand alone motion to value collateral pursuant to Local Bankr. R. 3015-1(j).

Second, Wells Fargo Bank, N.A. has also objected to confirmation of the plan. The Debtors filed a motion to value the collateral of Wells Fargo Bank, N.A. on August 31, 2015. The hearing on that motion was set for October 7, 2015. This creditor filed an untimely opposition on October 6, 2015, and, as a result, an order granting motion to value collateral adverse to this creditor was entered on October 14, 2015 (Dkt. 40). This creditor now requests a brief delay in order to obtain an interior appraisal of its collateral. Its collateral, however, has already been valued and this creditor has not moved for relief from the order valuing its collateral. The court cannot "re-value" collateral that has already been valued pursuant to a final order because this creditor failed to timely object to the motion to value its collateral. Wells Fargo Bank must first seek relief from the order valuing its collateral before the court can consider this creditor's request in relation to plan confirmation. Nevertheless, because the court has sustained the Chapter 13 Trustee's objection and will not confirm the Debtors' plan, the objection and request for continuance by Wells Fargo Bank is denied as moot.

Third, Ocwen Loan Servicing, LLC, also objects to confirmation of the Debtors' plan. Ocwen objects to confirmation on the basis that the plan proposes to pay arrearages of $5,886.00, when actual arrearages are $6,745.12. However, Ocwen's objection is set for hearing on December 16, 2015, when the confirmation hearing is set for November 18, 2015. Nevertheless, because the court has sustained the Chapter 13 Trustee's objection and will not confirm the Debtors' plan, this objection is overruled as moot.

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.

21.	15-26939-B-13 JPJ-1	JUANA CABRERA AND CUONG LE Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE 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.

22. 15-27739-B-13 PRISCILLA MACAYAN
Pro Se

MOTION TO IMPOSE AUTOMATIC STAY AND /OR MOTION TO EXTEND AUTOMATIC STAY
10-23-15 [12]

DEBTOR DISMISSED: 11/16/15

Final Ruling: No appearance at the November 18, 2015 hearing is required.

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

23. 11-49041-B-13 JAMES FERREIRA
PGM-1 C. Anthony Hughes

MOTION TO APPROVE LOAN MODIFICATION
10-19-15 [36]

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

The court's decision is to not permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Deutsche Bank National Trust Company, serviced by Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, agreed to a loan modification that reduced Debtor's mortgage payment from $2,294.70 a month to $1,414.60 a month. The first payment was due May 1, 2014, and continues for a total of 263 months.

The motion is supported by the Declaration of James Ferreira. The Declaration affirms Debtor's desire to obtain the post-petition financing. Although the Declaration does not provide evidence of Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor is able to pay this claim given that it is $880.10 less than the prior mortgage payment.

Nonetheless, the court's docket reflects that the Debtor has not filed amended Schedules I and J to update his income and expenses to show the new mortgage payment. Given that there is a decrease in the mortgage payment by $880.10, it appears that the Debtor may have the ability to pay more into the plan, even despite the new expenses associated with child support and daycare, and should have been since the inception of the decreased mortgage payment that occurred in May 1, 2014.

The motion is denied without prejudice.

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

24. 15-26241-B-13 REMINGTON PAUL
DVW-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-2-15 [35]

U.S. BANK N.A. VS.

Final Ruling: CONTINUED TO 11/25/15 AT 10:00 A.M. TO BE HEARD IN CONJUNCTION WITH CHAPTER 13 TRUSTEE'S MOTION TO DISMISS.

25. 15-24043-B-13 KRISTIANA LOPEZ
AP-1 Douglas B. Jacobs

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-16-15 [28]

DEBTOR DISMISSED: 11/3/2015

DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final Ruling: No appearance at the November 18, 2015, hearing is required.

Debtor dismissed case on November 3, 2015. Motion denied as moot.

26. 12-32245-B-13 CAROLE ARBUCKLE
JPJ-1 Richard A. Chan

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

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Debtor and Chapter 13 Trustee having entered a stipulation to withdraw the Trustee's motion and the court having entered an order approving the stipulation, 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.

27.	11-46548-B-13 TBH-3	CHANTE/EDIE TURNBOW Thomas B. Hjerpe	MOTION FOR COMPENSATION FOR THOMAS B. HJERPE, DEBTORS' ATTORNEY 10-12-15 [82]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Counsel for the Debtor's Final Motion for Compensation: Finalizing Interm Fee Award Dated October 24, 2013, has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

FEES AND COSTS REQUESTED

Thomas B. Hjerpe ("Applicant"), the attorney to Chapter 13 Debtors Chante Turnbow and Edie Turnbow ("Clients"), seeks an order finalizing the interim fee award dated October 24, 2013, for $2,575.00 in fees and $0.00 in expenses.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 85, Exh. A).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

> skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

BENEFIT TO THE ESTATE

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

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

Id. at 959.

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

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

Fees	$2,575.00
Costs and Expenses	$ 0.00

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

28. 15-27148-B-13 PETER/MARIAN SKILLMAN — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Peter L. Cianchetta — 10-21-15 [22]
Thru #29

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, feasibility depends on the granting of a motion to value collateral for RC Willey Home Furnishings. Pursuant to Local Bankr. R. 3015-1(j), the Debtors have filed, served, and set for hearing the motion to value on today's calendar. However, as indicated at Item #29, the motion is denied without prejudice.

Second, the terms for payment of the Debtors' attorney's fees are unclear. At Section 2.06, the plan does not specify 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, and 2017.

The plan filed September 18, 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.

29. 15-27148-B-13 PETER/MARIAN SKILLMAN — MOTION TO VALUE COLLATERAL OF RC WILLEY HOME FURNISHINGS, INC.
PLC-1 Peter L. Cianchetta — 10-22-15 [25]

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

The court's decision is to deny without prejudice the motion to value secured claim of RC Willey Home Furnishings, Inc.

The motion filed by Debtors to value the secured claim of RC Willey Home Furnishings, Inc.("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of "miscellaneous furniture" ("Asset"). The Debtors seek to value the Asset at a replacement value of $200.00 as of the petition filing date. As the owner, Debtor's

opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on October 13, 2015, by RC Willey Home Furnishings is the claim which may be the subject of the present motion.

Discussion

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

The total dollar amount of the obligation represented by the financing agreement with RC Willey Home Furnishings, Inc. is stated in Proof of Claim Number 1 and the Debtors' motion as being $2,207.28. Debtors assert that the price a retail merchant would charge for the Asset is $200.00. However, the Debtors have not persuaded the court regarding their position as to the value of the Asset. The Debtors do not indicate in either their motion or declaration what exactly is "miscellaneous furniture," the condition of the furniture, or the basis for the valuation. Therefore, the valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

30. 15-26950-B-13 ALEKSANDR MOLITVENIK — OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
ASW-1 — Pro Se — 10-20-15 [34]
Thru #32

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

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

Subsequent to the filing of U.S. Bank, N.A.'s objection, the Debtor filed an amended plan on November 4, 2015. The earlier plan filed September 14, 2015, is not confirmed.

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

31. 15-26950-B-13 ALEKSANDR MOLITVENIK — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 — Pro Se — 10-19-15 [24]

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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on November 4, 2015. The earlier plan filed September 14, 2015, is not confirmed.

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

32. 15-26950-B-13 ALEKSANDR MOLITVENIK — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-3 — Pro Se — 10-19-15 [27]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions 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 exemptions are disallowed in

their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

33. 15-27051-B-13 SUSAN REICHARD
JPJ-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-21-15 [23]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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, feasibility cannot be fully assessed because the Debtor has not amended Schedule J to include her vehicle insurance as requested by the Trustee at the meeting of creditors on October 15, 2015. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the terms for payment of the Debtor's attorney's fees are unclear. At Section 2.07, the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

The plan filed September 19, 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.

34. 15-26154-B-13 MARGARET DAVIDSON
JM-1 Michael O'Dowd Hays
Thru #35

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

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was originally 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 matter will be determined at the scheduled hearing.

This matter was continued from November 4, 2015, in light of the Trustee's continued objection to confirmation at Item #35. The Trustee's objection was continued in order for the Debtor to review the plan and ensure its completion within 60 months.

The objection asserted by Springleaf Financial Services, Inc., as to the valuation of a 2000 Ford Taurus, has been resolved by a stipulation dated October 27, 2015.

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

35. 15-26154-B-13 MARGARET DAVIDSON
JPJ-1 Michael O'Dowd Hays

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

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was originally 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 matter will be determined at the scheduled hearing.

This matter was continued from November 4, 2015, on the Trustee's objection that the plan exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The Trustee stated on the record that plan payments must be increased in order for the plan to be completed within 60 months. The Debtor stated on the record that it will review the plan to ensure completion within 60 months. No new plan has been filed as of November 15, 2015.

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

36.	15-22061-B-13 JPJ-1	AMECHI AGBOLI Eric W. Vandermey	MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 10-14-15 [33]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Trustee's Motion of to Re-Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 convert this Chapter 13 case to a Chapter 7.

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

First, the Debtor has failed to file, set for hearing, and serve a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3) and 3015-1(d)(1). The plan was filed on August 27, 2015.

Second, 11 U.S.C. § 1324 requires that a confirmation hearing be held no earlier than 20 days and no later than 45 days after the date of the meeting of creditors. In this case, the meeting was set for and concluded on September 3, 2015. The 45-day deadline expired on October 18, 2015.

Discussion

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

The Bankruptcy Code Provides:

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

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

Cause exists to re-convert this case pursuant to 11 U.S.C. § 1307(c) since the 45-day deadline set by 11 U.S.C. § 1324 expired on October 18, 2015, and the court cannot

timely conduct a confirmation hearing. This case was originally filed under Chapter 7 and re-conversion to a Chapter 7 rather than dismissal is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c). The motion is granted and the case is re-converted to a case under Chapter 7.

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

37. 15-25761-B-13 FRANCISCO QUEMA MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis 9-24-15 [27]

DEBTOR DISMISSED: 10/30/2015

Final Ruling: No appearance at the November 18, 2015 hearing is required.

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

38. 15-25761-B-13 FRANCISCO QUEMA
MRL-1 Mikalah R. Liviakis

COUNTER MOTION TO DISMISS CASE
10-27-15 [38]

DEBTOR DISMISSED: 10/30/2015

Final Ruling: No appearance at the November 18, 2015 hearing is required.

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

39. 12-38965-B-13 JOSEPH/VICKIE WHITSON
JPJ-4 Peter G. Macaluso
Thru #40

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

Tentative Ruling: The Trustee's Motion to Convert to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

This matter was continued from October 7, 2015, to be heard in conjunction with Debtors' motion to modify Chapter 13 plan. The modified plan filed on October 5, 2015, is granted as indicated at Item #40. As such, the Trustee's motion is denied without prejudice.

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

40. 12-38965-B-13 JOSEPH/VICKIE WHITSON
PGM-1 Peter G. Macaluso

MOTION TO MODIFY PLAN
10-5-15 [75]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 5, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on October 5, 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.

41. 14-29665-B-13 SCOTT BARBER
ULC-2 Ronald W. Holland

CONTINUED ORDER TO SHOW CAUSE
8-18-15 [63]

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

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

42. 15-23669-B-13 DARLENE CHIAPUZIO-WONG
PGM-3 Peter G. Macaluso
Thru #43

MOTION TO VALUE COLLATERAL OF LUIS GARCIA SAMANO
10-16-15 [73]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Motion to Value Collateral of Luis Garcia Samano 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 Luis Garcia Samano at $0.00.

The motion to value filed by Debtor to value the secured claim of Luis Garcia Samano ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5406 Butte Circle, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of $464,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $619,319.92. Creditor's second deed of trust secures a claim with a balance of approximately $7,641.97. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

43.	15-23669-B-13 PGM-4	DARLENE CHIAPUZIO-WONG Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF LUIS GARCIA SAMANO 10-16-15 [79]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

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

The motion to value filed by Debtor to value the secured claim of BPE Law Group ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5406 Butte Circle, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of $464,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $619,319.92. The second deed of trust secures a claim with a balance of approximately $7,641.97. Creditor's third deed of trust secures a claim with a balance of approximately $14,719.37. 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.

44. 15-23473-B-13 RODNEY/CHRISTINE HOLLAND MOTION TO CONFIRM PLAN
BLG-4 Pauldeep Bains 10-6-15 [58]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Confirm Second Amended Plan Filed on October 6, 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 motion will be determined at the scheduled hearing.

45. 15-25373-B-13 LISA ILAGA
MRL-2 Mikalah R. Liviakis

MOTION TO CONFIRM PLAN
9-29-15 [51]

DEBTOR DISMISSED: 10/30/2015

Final Ruling: No appearance at the November 18, 2015 hearing is required.

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

46. 14-29375-B-13 JAMES FETTY MOTION TO MODIFY PLAN
RJ-6 Richard L. Jare 10-8-15 [79]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on October 7, 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.

47. 15-24077-B-13 BLF-1 **Thru #49**

ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER
Gordon G. Bones

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

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

The court's decision is to deny with prejudice the motion to value secured claim of Bank of America, N.A.

First, the Debtors did not serve Bank of America, N.A. by certified mail as required in the case of FDIC insured institutions under Bankruptcy Rule 7004(h).

Second, as stated in Item #48, the court finds that the value of the subject real property commonly known as 9388 Trebbiano Circle, Elk Grove, California ("Property") to be $452,000.00. Bank of America, N.A.'s second deed of trust secures a claim with a balance of approximately $23,098.60. Since the total due for the first and second lien is $412,415.11 ($389,316.51 on the Nationstar 1st deed of trust and $23,098.60 on the Bank of America 2nd deed of trust), and is less than the value of the Property, Bank of America, N.A.'s deed of trust is not under-collateralized and is a secured claim in the amount of $23,098.60.

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

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

48. 15-24077-B-13 BLF-2

ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER
Gordon G. Bones

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

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

The court's decision is to deny with prejudice the motion to value collateral of Ditech Financial LLC fka Green Tree Servicing LLC.

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

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

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

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

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

Proof of Claim Filed

It appears that Proof of Claim Number 18 filed on September 23, 2015, by Ditech Financial LLC fka Green Tree Servicing LLC is the claim which may be the subject of the present motion.

Opposition

Creditor has filed a supplemental opposition asserting that the value of the Property is at least $452,000.00. Creditor's valuation is based on an appraisal completed on October 8, 2015, by Taylor R. Greer, a licensed real estate appraiser with Fatzer Appraisal Group. Greer completed a retroactive appraisal of the Property's worth as of the petition date. The appraiser's declaration and appraisal report are attached as Exhibit 1 and 2, respectively (Dkt. 57). The court finds sufficient evidence that the value of the Property is $452,000.00.

Considering that the liens on the 1st and 2nd deeds of trust total $412,415.11, that leaves equity available for this creditor's lien on the Debtors' principal residence. *See* 11 U.S.C. § 1322(b)(2). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

49.	15-24077-B-13 BLF-3	ZAK VOGLER AND MICHELLE MARTINEZ-VOGLER Gordon G. Bones	CONTINUED MOTION TO CONFIRM PLAN 8-26-15 [30]

Tentative Ruling: The Motion to Confirm Chapter 13 First Amended Plan was originally 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 maximum fee that may be charged is $4,000.00 in nonbusiness cases and $6,000.00 in business cases. The Debtors' attorney's fees in the amount of $4,500.00 does not comply with Local Bankr. R. 2016-1.

Second, Section 2.06 of the plan fails to 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, and 2017.

Third, feasibility depends on the granting of motions to value collateral for Bank of America, N.A. and Ditech Financial LLC fka Green Tree Servicing LLC. These motions were denied at Items #47 and 48.

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.

50. 15-27180-B-13 VINCENT/DEANNA MOORE
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-21-15 [13]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

There being no objection to confirmation, the plan filed September 11, 2015, will be confirmed.

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

51. 15-21781-B-13 JASON/SHELLY BELOTTI MOTION TO MODIFY PLAN
RDS-3 Richard D. Steffan 9-24-15 [65]

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

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

First, the plan will take approximately 83 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The plan is underfunded as the plan payment of $530.00 will not pay the secured claims in full within the proposed plan length.

Second, the post-confirmation modified plan filed September 24, 2015, proposes to change the interest rate on the secured debt owed to Wells Fargo Dealer Services in Class 2A from 7.50% to 0.00%. Section 1329 does not permit the Debtors to change the interest rate in a post-confirmation modified plan.

Third, the post-confirmation modified plan filed September 24, 2015, proposes to change the interest rate on the secured debt owed to RC Willey Home Furnishings in Class 2B from 7.50% to 0.00%. Section 1329 does not permit the Debtors to change the interest rate in a post-confirmation modified plan.

Fourth, the post-confirmation modified plan filed September 24, 2015, proposes to change the interest rate on the secured debt owed to Travis Credit Union in class 2B from 7.50% to 0.00%. Section 1329 does not permit the Debtors to change the interest rate in a post-confirmation modified plan.

Fifth, feasibility depends on the granting of a motion to value collateral for RC Willey Home Furnishings. Pursuant to Local Bankr. R. 3015-1(j), the Debtors must file, serve, and set for hearing a valuation motion and the hearing on the valuation must be concluded before or in conjunction with the confirmation of the plan. To date the Debtors have not filed, set for hearing, or served on the respondent creditor and the trustee a motion to value the collateral.

Sixth, feasibility depends on the granting of a motion to value collateral for Travis Credit Union. Pursuant to Local Bankr. R. 3015-1(j), the Debtors must file, serve, and set for hearing a valuation motion and the hearing on the valuation must be concluded before or in conjunction with the confirmation of the plan. To date the Debtors have not filed, set for hearing, or served on the respondent creditor and the trustee a motion to value the collateral.

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

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

52. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2154 Peter G. Macaluso
MAYER ET AL V. WELLS FARGO BANK, N.A.
Thru #53

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-12-15 [18]

Final Ruling: THIS MATTER IS CONTINUED TO 11/25/15 AT 10:00 A.M.

53. 15-25582-B-13 ASHWANI/ASHWANI MAYER
15-2154 SBM-1
MAYER ET AL V. WELLS FARGO BANK, N.A.

CONTINUED MOTION FOR SUMMARY JUDGMENT
10-2-15 [28]

Final Ruling: THIS MATTER CONTINUED TO 11/25/15 AT 10:00 A.M.

54. 11-37784-B-13 TRACY/DENNIN WINGETT MOTION TO MODIFY PLAN
JHH-7 Judson H. Henry 10-14-15 [106]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan Dated and Filed October 14, 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.

The plan filed October 14, 2015, is incomplete since it does not list a monthly dividend for secured creditor Union Bank listed in Class 2B.

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

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

55. 14-28784-B-13 TERRANCE/TERESA PARKHURST MOTION FOR SUBSTITUTION
RAC-2 Richard A. Chan 10-13-15 [27]
Thru #56

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

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

Debtor Terrance Parkhurst gives notice of death of his wife and Co-Debtor Teresa Parkhurst and requests the court substitute Terrance Parkhurst in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of

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

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

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

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

56. 14-28784-B-13 TERRANCE/TERESA PARKHURST MOTION TO MODIFY PLAN
RAC-3 Richard A. Chan 10-13-15 [33]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and

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

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

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

57. 15-22784-B-13 JOSEPH/HEATHER ADKINS MOTION TO RECONSIDER
DBJ-3 Bonnie Baker 10-14-15 [96]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

58. 15-21785-B-13 JOYCE ORTEGA MOTION TO SELL
PGM-1 Peter G. Macaluso 10-21-15 [41]

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

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

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 6920 Kermit Lane, Fair Oaks, California.

The proposed purchaser of the property Sergil Ryshko ("Buyer") has agreed to purchase the Property for $210,000.00. As stated in the Declaration of Joyce Ortega, the Property is encumbered by a first deed of trust serviced by Ocwen Loan Servicing, LLC and a second deed of trust serviced by Green Tree Servicing, LLC. Debtor asserts that both lenders have consented to the sale and has provided approval letters from the lenders (Dkt. 44, Exh. C, D). The Debtor states that she anticipates receiving $10,000.00 from the proceeds of the sale. These proceeds and exempted funds will be used by the Debtor to relocate to the Bay Area and purchase a mobile home. Debtor further asserts that her confirmed plan provides for 100% payment to general unsecured creditors and that the sale of the Property does not affect her ability to complete the plan.

Debtor has submitted exhibits and states in her declaration that Ocwen Loan Servicing, LLC and Green Tree Servicing, LLC have agreed to the short sale. Since they have approved short sale, the court can presume they have notice of the sale.

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

59. 11-27389-B-13 JAMES/DENISE KORCZYK
PGM-1 Peter G. Macaluso

MOTION TO SUBSTITUTE DENISE R. KORCZYK FOR JAMES S. KORCZYK AS SUCCESSOR-IN INTEREST AND/OR MOTION TO WAIVE THE 1328 REQUIREMENT FOR DEBTOR JAMES S. KORCZYK
10-20-15 [51]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

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

Debtor Denise Korczyk gives notice of death of her husband and Co-Debtor James Korczyk and requests the court substitute Denise Korczyk in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

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

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

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

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

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

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

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

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

60. 13-34789-B-13 JASON/MELINDA BORG — MOTION TO SELL FREE AND CLEAR OF LIENS
EJS-2 Eric John Schwab — 11-4-15 [36]

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

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

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor Jason Borg is a general partner of Honey Bee Realty, LP, a real estate partnership that owns real property located at 8800 Coral Berry Way, Elk Grove, California. Honey Bee Realty, LP has now decided to sell the Property and, accordingly, Debtors now seek authorization to sell their interest in the Property.

The proposed purchasers of the property Yuping Zheng and Hanh Le Duong ("Buyers") have agreed to purchase the Property for $325,000.00. Upon the completion of the sale, Golden 1 Credit Union, holder of the first mortgage, will release its lien on the Property. Additionally, Honey Bee Realty, LP will use sale proceeds to cover costs owed to the partnership and to pay off capital investments made by Chris Campbell, the other general partner of Honey Bee Realty, LP.

Debtors assert that they are entitled to $30,717.20 of the total net proceeds. Of that amount, 25% ($7,679.30) will be deducted to cover the capital gains tax. Since the Debtors have claimed an exemption in the Property in the amount of $8,482.00 (and not $8,484.00 as stated in the motion), there is $14,555.90 (and not $14,559.09 as stated in the motion) of the remaining funds owed to the Debtors that is not protected by the exemption. Debtors state that they intend to use these funds to purchase a new HVAC unit for their primary residence, purchase new tires for one of their vehicles, and rebuild a perimeter fence around their primary residence. Copies of the estimates for a new HVAC, new tires, and a new fence are filed as Exhibit A, Dkt. 39.

The court's review of Exhibit A shows that the estimates for a new HVAC is $15,324.00, new tires is $386.08, and a new fence is $6,012.50. The court finds that the use of $14,555.90 toward these costs is reasonable. Any surplus in funds not used shall be paid to the Trustee by Honey Bee Realty, LP.

A review of the proof of service shows that Golden 1 Credit Union was not served at the proper address. Since proper service is necessary for the court to have jurisdiction over the responding party, (*See Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir. 1992), failure to serve a motion properly results in a challenge to the order granting the relief requested. Nevertheless, the docket also reflects a Request for Special Notice filed by Ryan M. Davis on behalf of Golden 1 Credit Union and Mr. Davis was properly served.

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

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

61.	13-35493-B-13 PGM-1	RICHARD/OTTOMESE RICE Peter G. Macaluso	MOTION TO SUBSTITUTE RICHARD C. RICE FOR OTTOMESE M. RICE AND/OR MOTION TO WAIVE THE 11 U.S.C. 1328 REQUIREMENT FOR OTTOMESE M. RICE 10-20-15 [48]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

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

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

Debtor Richard Rice gives notice of death of his wife and Co-Debtor Ottomese Rice and requests the court substitute Richard Rice in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party**. There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004**

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

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

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

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

62. 14-21394-B-13 PATRICK/SUZANNE CLARK
PP-6 W. Scott de Bie

MOTION TO DETERMINE PREMATURE STATUS OF APPEAL OF MOTION TO APPROVE VALUATION AND TRANSFER OF STOCK PURSUANT TO CONFIRMED PLAN
11-4-15 [197]

Final Ruling: No appearance at the November 18, 2015, hearing is required.

The court finds that oral argument will not aid in the resolution of this matter and will enter a written decision prior to the hearing.

63. 15-27196-B-13 RICHARD/ROXANNE ELSAS
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-21-15 [22]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 provided the Trustee with requested copies of certain items including, but not limited to, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits of Joint Debtor Roxanne Elsas' business. The Debtors have not complied with 11 U.S.C. § 521.

The plan filed September 12, 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.