UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 6, 2016 at 10:00 a.m.

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1. 14-20003-B-13 JOHN RANDALL — MOTION TO VACATE DISMISSAL OF CASE
SJS-1 Scott J. Sagaria — 12-4-15 [52]

DEBTOR DISMISSED: 09/27/2015

Tentative Ruling: The Debtor's Motion to Vacate Dismissal of Chapter 13 Bankruptcy has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Debtor John Randall argues that he was unable to make plan payments because of a wage decrease and because the debtor's attorney erroneously calendared the deadline to submit the requisite paperwork to the Chapter 13 Trustee.

In response, the Trustee states that the case was dismissed not due to missed plan payments but because the Debtor failed to turn over $482.00 of the proceeds from his 2014 tax returns. After the case was dismissed, the Trustee issued a refund to the Debtor in the amount of $1,532.07.

Debtor's confirmed plan (dkt. 20) specifically stated: "Debtor shall turnover to the Chapter 13 Trustee any income tax refund that exceeds $2,000 every year." The Debtor provided the Trustee with documents that confirmed he received a $2,482.00 refund from his 2014 income taxes. The Debtor failed to turnover $482.00 of that refund to the Trustee as the confirmed plan required.

The Debtor's failure to turnover $482.00 to the Chapter 13 is a material default by the Debtor under the terms of his confirmed plan. That material default is cause for dismissal under 11 U.S.C. § 1307(c)(6). The Debtor has not demonstrated excusable neglect related to his unauthorized retention of the $482.00 he was required to turn over to the Trustee and, thus, has not demonstrated any basis that would allow the court to vacate the dismissal of this case.[1] Therefore, the Debtor's motion to vacate dismissal of his Chapter 13 case is denied.

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

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[1] The court also notes this case was dismissed on September 27, 2015. The Debtor waited until December 4, 2015, before he moved to vacate the dismissal. The Debtor offers no explanation for his over two-month delay in moving to vacate. And the Debtor's delay is prejudicial. All creditors have been notified of the dismissal of this case and the Chapter 13 Trustee has refunded all funds received from the Debtor to the Debtor.

2. 15-26907-B-13 WILLIAM DOTY MOTION TO CONFIRM PLAN
RKB-1 R. Kenneth Bauer 11-25-15 [31]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 25, 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.

3.	15-28407-B-13 JPJ-1	WILTON ALSANDOR Bert M. Vega	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-8-15 [26]

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

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 December 10, 2015. The confirmation hearing for the amended plan is scheduled for February 3, 2016. The earlier plan filed October 29, 2015, is not confirmed.

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

4. 12-23011-B-13 JOHN/CATHERINE KOLL MOTION TO MODIFY PLAN
ACK-2 Aaron C. Koenig 11-21-15 [44]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

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

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

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

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

5. 15-27614-B-13 STEPHEN/SANDRA DEGUIRE
MF-1 Reno F.R. Fernandez

CONTINUED MOTION TO CONFIRM PLAN
11-6-15 [24]

Thru #6
See Also #8-9

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER CONTINUED TO 1/20/16 AT 10:00 A.M. PER ORDER ENTERED 1/04/16.

6. 15-27614-B-13 STEPHEN/SANDRA DEGUIRE
WFH-1 Reno F.R. Fernandez

CONTINUED MOTION TO DISMISS CASE
11-18-15 [33]

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER CONTINUED TO 1/20/16 AT 10:00 A.M. PER ORDER ENTERED 1/04/16.

7. 15-27814-B-13 SHEILA FOSTER
MET-2 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-9-15 [43]

GEOFFREY SAFT 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 having been filed, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

8. 15-27615-B-13 COREY DEGUIRE CONTINUED MOTION TO CONFIRM PLAN
MF-1 Reno F.R. Fernandez 11-6-15 [25]
Thru #9

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER CONTINUED TO 1/20/16 AT 10:00 A.M. PER ORDER ENTERED 1/04/16.

9. 15-27615-B-13 COREY DEGUIRE CONTINUED MOTION TO DISMISS CASE
WFH-1 Reno F.R. Fernandez 11-18-15 [32]

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER CONTINUED TO 1/20/16 AT 10:00 A.M. PER ORDER ENTERED 1/04/16.

10. 15-29215-B-13 SONJA REYNOLDS — MOTION TO VALUE COLLATERAL OF J.P. MORGAN CHASE BANK, N.A.
JDP-1 Christian J. Younger — 12-11-15 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, Motion to Value Collateral of J.P. Morgan Chase Bank N.A. 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 J.P. Morgan Chase Bank N.A. at $0.00.

The motion to value filed by Debtors to value the secured claim of J.P. Morgan Chase Bank N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 285 Lillean Court, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $401,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $459,515.13. Creditor's second deed of trust secures a claim with a balance of approximately

$43,252.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

11.	15-25816-B-13 SNM-2	JOSE CHAPA AND ESTHER SWENSEN-CHAPA Stephen N. Murphy	CONTINUED MOTION TO CONFIRM PLAN 10-22-15 [42]

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

This matter was continued from December 9, 2015, to provide the Debtors with an opportunity to become current with their December and January plan payments. Unless the Debtors are current on their plan payments, the court's decision is to not confirm the second amended plan.

The Debtors are delinquent to the Trustee in the amount of at least $1,346.00, which represents approximately 1 plan payment. When this matter was heard on December 9, 2015, an additional plan payment in the amount of $1,362.00 was also due. By the time this matter is heard, the Debtors will likely have an additional plan payment due. 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.

12. 15-28217-B-13 JUAN DIAZ — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Pro Se — 12-8-15 [23]
Thru #13

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

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

First, the Debtor did not appear at the duly noticed first meeting of creditors set for December 3, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(H).

Third, the Debtor is delinquent to the Trustee in the amount of $100.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $100.00 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the plan does not provide treatment for the secured debt of creditor Nationstar Mortgage listed in Schedule D that is either acceptable to the creditor or which will result in payment in full with a market rate interest. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

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

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

Seventh, Section 1.03 fails to provide the duration of the plan payments and Section 2.15 fails to provided a dividend to the general unsecured creditors. It cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(4) or (6) as well as 11 U.S.C. § 1325(b)(1)(B) without this information.

The plan filed November 5, 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.

13. 15-28217-B-13 JUAN DIAZ — OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
PPR-1 Pro Se — 12-9-15 [33]

Tentative Ruling: The Objections to Proposed Chapter 13 Plan and Confirmation Thereof 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.

U.S. Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $43,833.02 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Though requested in the Motion, the creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with its Objection. The creditor is not awarded any attorneys' fees.

The plan filed November 5, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

No other or additional relief is granted by the court.

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

14.	15-25118-B-13 DPB-2	CYNTHIA BROWN Douglas P. Broomell	CONTINUED MOTION TO CONFIRM PLAN 10-12-15 [77]

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER CONTINUED TO 1/20/16 AT 10:00 A.M. TO BE HEARD IN CONJUNCTION WITH TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM.

15. 15-24019-B-13 ROY/CHERISE WHITAKER MOTION TO CONFIRM PLAN
FI-1 Fred A. Ihejirika 11-17-15 [97]

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

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

First, the Debtors are delinquent to the Trustee in the amount of $208.00, which represents approximately 0.5 plan payment. By the time this matter is heard, an additional plan payment in the amount of $380.00 will also be due. The Debtors do not appear to be able to make plan payments as proposed.

Second, the terms for payment of the Debtors' attorney's fees are unclear. 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 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.

16. 15-28323-B-13 MICHELLE BLAND
JPJ-1 Ashley R. Amerio

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-15 [17]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 6, 2016, 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 October 26, 2015, will be confirmed.

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

17. 14-25625-B-13 DOUGLAS THURSTON
HSM-1 Catherine King

MOTION FOR COMPENSATION FOR
KING LAW OFFICES
10-13-15 [139]

SHEILA GILDEA VS.

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal of the Motion for Compensation, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) 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.

18. 14-31028-B-13 JUSTIN/MICHELE BROUSSARD
PGM-1 Peter G. Macaluso

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SYSTEMS MECHANICAL, INC.
11-18-15 [57]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

19. 15-28829-B-13 WAGMA SAFI
MLA-1 Mitchell L. Abdallah

CONTINUED MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO IMPOSE AUTOMATIC STAY
11-19-15 [9]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 20, 2015, because the plan would complete in 81 months, and thus exceeded the maximum amount of time allowed under § 1322(d), due to a Class 1 mortgage arrears claim being greater than expected (Case No. 13-36107, Dkts. 60, 63). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that she was unable to timely complete plan payments due to an increase in mortgage loan arrearages that were realized after confirmation of the Chapter 13 plan. The Debtor had agreed to the dismissal of the prior case and asserts that re-filing a new case would afford her with the best option to propose and confirm a viable Chapter 13 plan. Debtor states that she will file a new plan that will bring current the mortgage loan and that she will be able to afford the new plan payments because it is an increase of just $171.00, which will be covered by Debtor's son and daughter. Debtor's son and daughter have submitted a Declaration stating that they intend to increase their contributions to their mother by $200.00 per month. The increased monthly contributions will begin December 15, 2015, and will continue for the life of the Debtor's new plan.

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

The motion is granted and the automatic stay is extended for all purposes and parties.

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

20. 15-28330-B-13 LINDA ALBERTS
JPJ-1 Mikalah R. Liviakis
Thru #21

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

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

The Debtor did not appear at the duly noticed first meeting of creditors set for December 3, 2015, as required pursuant to 11 U.S.C. § 343. The reason for this was Debtor's death on or about December 2, 2015 (dkt. 18, para. 2; dkt. 20).

The plan filed October 27, 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.

21. 15-28330-B-13 LINDA ALBERTS
MRL-1 Mikalah R. Liviakis

MOTION TO APPROVE NOMINATION OF DEBTOR'S REPRESENTATIVE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
12-16-15 [18]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Notice of Death and Motion to Approve Nomination of Debtor's Representative and to Convert to Chapter 7 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 substitute Jason Alberts as the representative of deceased Debtor Linda Alberts and convert the case to one under Chapter 7.

Debtor moves for an order approving the nomination of Debtor's representative. Jason Alberts has consented to act as the representative of the deceased debtor, Linda Alberts, who passed away on or about December 2, 2015, in this bankruptcy proceeding. Jason Alberts is the son of the deceased debtor.

Additionally, Debtor requests that the case be converted from a Chapter 13 to 7 because a Chapter 13 is no longer practical and the estate has non-exempt assets that may be used to pay some creditors.

Discussion

Motion to Approve Nomination of Debtor's Representative

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.

In this case, the court finds that Jason Alberts is a proper representative for the deceased. Mr. Alberts provides a Declaration stating that he was given power of attorney, is readily familiar with the Debtor's financial affairs, and is the executor of the deceased Debtor's estate. Based on the information provided, the motion is granted with regard to the nomination of the Debtor's representative.

Motion to Convert to Chapter 7

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 convert this case pursuant to 11 U.S.C. § 1307(b) since the Debtor is now deceased, the deceased Debtor's representative requests conversion, the estate has non-exempt assets that may be used to pay creditors, and the case may proceed under Chapter 7. *See* Fed. R. Bankr. P. 1006. The motion is granted and the case is converted to a case under Chapter 7.

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

22. 15-24335-B-13 BENJAMIN BARNES AND JENNIFER VARELA-BARNES
PGM-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
11-18-15 [53]

Tentative Ruling: This matter appears as a "Motion to Modify" on the docket when it should be a "Motion to Confirm" since this is a second amended plan proposed prior to confirmation. The Motion to Confirm Debtors' Second Amended Plan Filed on November 18, 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 second amended plan. Based on the Trustee's calculation in the opposition filed on December 15, 2015, the plan should provide for no less than 100% payment to unsecured creditors based on the Debtors' current monthly disposable income. The Debtors' reply filed December 28, 2015, states that they have made adjustments to lines 17 and 45 on Official Form 22C-2 without addressing the Trustee's other calculations. Consequently, it does not appear that the Debtors have corrected Official Form B 22C-2 so that the their projected disposable income is being applied to make payments to unsecured creditors.

The court finds that the second amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and the plan will not be confirmed.

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

23. 12-29937-B-13 MARIA VRMEER MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 11-10-15 [47]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on November 10, 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 November 10, 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.

24. 15-26339-B-13 WILLIAM/NANCIE DUNHAM MOTION TO CONFIRM PLAN
CK-2 Catherine King 11-16-15 [56]
Thru #25

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Debtors having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

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

25. 15-26339-B-13 WILLIAM/NANCIE DUNHAM COUNTER MOTION TO DISMISS CASE
CK-2 Catherine King 12-23-15 [69]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

Because the plan proposed by the Debtors is not confirmable and has been withdrawn by the Debtors, 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.

26. 15-26244-B-13 DOUGLAS GONZALES MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 11-16-15 [32]
Thru #27

Tentative Ruling: The Motion to Confirm Debtors' [sic] First Amended Plan Filed on November 16, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, feasibility of the plan depends on the granting of the motion to value collateral for Bank of America, N.A. at Item #27. That motion is denied without prejudice as stated in Item #27.

Second, the Debtor has not filed an amended petition to reflect that he had filed a Chapter 13 bankruptcy in 2011, case number 11-40420. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

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

27. 15-26244-B-13 DOUGLAS GONZALES MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso BANK OF AMERICA, N.A.
11-16-15 [38]

Tentative Ruling: The Motion to Value Collateral of Bank of America, N.A. has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the court cannot determine if service is proper or who the proper creditor is.

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

This motion concerns real property located at 7625 Lake Hill Drive, Elk Grove, California. The motion states that the first and second deeds of trust are held by Bank of America. The Debtor's declaration in support of the motion states the second deed of trust - the deed of trust which is the subject of the motion - is held by BAC Home Loans Servicing. To further complicate matters, Claim Number 12 filed on November 27, 2015, states that a lien on this property to secure a debt of approximately $358,877.43 is held by The Bank of New York Mellon fka the Bank of New York as Trustee for the Certificate Holders of CWMBS, Inc., CHL Mortgage Pass Through Trust 2004-16, Mortgage Pass Through Certificates, Series 2004-16. The amount stated in the proof of claim is roughly equal to the amount owing on the first deed of trust according to the motion.

The court has three concerns. First, there is a conflict between the motion and the declaration as to who is the actual creditor under the second deed of trust. Second, assuming (as appears to be the case) that Bank of New York Mellon and not Bank of America holds the first deed of trust, the Debtor needs to explain and clarify if the second deed of trust is also now held by Bank of New York Mellon or it if is still held by Bank of America, or some other creditor. Third, the certificate of service filed with the motion states that only Bank of America was served by certified mail as required by Rule 7004(h). Until the Debtor clarifies who the actual creditor on the second deed of trust is - a problem in and of itself - the court cannot determine if

service is proper.

Therefore, motion will be denied without prejudice.

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

28. 11-26545-B-13 MICHAEL BARNETT
PGM-1 Peter G. Macaluso

MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR AND NOTICE OF DEATH
12-2-15 [100]

Final Ruling: No appearance at the January 6, 2016, 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 Debtor's spouse who is appointed representative of the estate, continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Karen M. Barnett gives notice of death of her husband and Debtor Michael Barnett and requests the court substitute Karen M. Barnett in place of her deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

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

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

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

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

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

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

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. Karen M. Barnett receives $800.00 per month from a survivor's annuity. The Debtor has paid $26,457.00 to the Chapter 13 Trustee to date and is in month 56 of a 60-month plan. Despite the death of Michael Barnett in April 2014, Karen M. Barnett has continued to make timely payments and the case will be successfully completed in the sixtieth month as scheduled. 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.

29. 11-39246-B-13 ROWENA WALKER MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 11-24-15 [111]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion Modify Chapter 13 Plan After Confirmation Filed on November 24, 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 November 24, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

30. 15-25547-B-13 TIMOTHY/MONICA BARRY MOTION TO CONFIRM PLAN
MWB-2 Mark W. Briden 11-13-15 [64]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Debtors having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

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

31. 15-28348-B-13 ALEXANDER SCOTT — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Kristy A. Hernandez — 12-8-15 [32]

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, due to unsecured claims filed in amounts higher than scheduled, the plan will take approximately 68 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).

Second, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify 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, the Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition. Therefore, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

The plan filed November 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.

32. 15-28549-B-13 SHARON WILDEE
JPJ-1 Peter G. Macaluso
Thru #33

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-15 [30]

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

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

First, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information for Class 1 Creditor Sonora Springs Homeowner's Association. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

The plan filed November 2, 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.

33. 15-28549-B-13 SHARON WILDEE
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
12-2-15 [20]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion to Value Collateral of Americredit Financial Services, Inc. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Americredit Financial Services, Inc. at $6,370.00.

The motion filed by Debtor to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Mazda ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,370.00 as of the petition filing date. This value was established by stipulation entered with the lender in Debtor's previous case (#15-22932) (dkt. 24).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim Number 1 filed on November 12, 2015, by Americredit Financial Services, Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on July 10, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $13,400.41. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $6,370.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

34. 14-31850-B-13 TUA/SHING VANG
PGM-4 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
11-27-15 [63]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

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

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

Debtors seek court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to provide Debtors a permanent loan modification with a mortgage payment of $1,686.01 per month. The Debtors have completed trial loan modification payments. The Debtors first payment was made on August 1, 2015, and will be due each subsequent month for a total of 480 months. The Debtors assert that the modification does not affect the distribution to unsecured creditors, whom were originally to be paid no less than 0.00% in the original Chapter 13 plan.

The motion is supported by the Declaration of Tua Therk and Shing Moua Vang. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors' will be able to pay this claim since they have been making monthly mortgage payments of $1,686.01 since August 1, 2015.

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

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

35. 15-28450-B-13 LYNN WELCH
JPJ-1 Robert S. Gimblin

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-15 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 6, 2016, 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 October 30, 2015, will be confirmed.

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

36. 15-28550-B-13 KIMBERLY MILLER
JPJ-1 Eamonn Foster

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-17-15 [15]

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

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

First, the meeting of creditors was continued to January 14, 2016, to allow the Debtor the opportunity to provide evidence of her identification and her social security card to the Trustee in order to be examined by the Trustee under oath.

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

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

Fourth, the plan will take approximately 49 months to complete, which is 8 months longer than the proposed duration of payments of 41 months. Pursuant to § 1.03 of the mandatory form plan, monthly payments may only continue for an additional 6 months.

The plan filed November 2, 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.

37. 15-28551-B-13 DONCELLA LOGAN
JPJ-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-15 [14]

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

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

First, the Debtor has not filed an amendment to the petition to disclose a previous Chapter 13 case that was filed in the Eastern District of California (case # 14-24184).

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

Third, the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Debtor's monthly disposable income is $85.44 and the Debtor must pay no less than $5,126.40 to general unsecured creditors. The plan only proposes to pay a dividend of 16% or approximately $480.00 to Class 7 general unsecured creditors.

The plan filed November 2, 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.

38. 15-27752-B-13 JOSE CURIEL
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-15-15 [28]

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

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

First, the meeting of creditors was continued to January 14, 2016, in order for the Trustee to thoroughly examine the Debtor under oath. The plan cannot be confirmed prior to a thorough examination of the Debtor.

Second, the plan payment in the amount of $228.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $232.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed October 1, 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.

39. 12-22553-B-13 JASON/SHANON ROBLE MOTION TO MODIFY PLAN
DBL-1 Bruce Charles Dwiggins 11-25-15 [45]

Tentative Ruling: The Motion to Confirm Second Modified Chapter 13 Plans [sic] Dated November 25th, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the modified plan does not properly account for all payments the Debtors have paid to the Trustee to date.

Second, the modified plan does not specify a cure of the post-petition arrearage owed to Shell Point Mortgage including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Third, due to an increase in the Debtors' monthly mortgage payment effective January 2016, the plan payment in the amount of $1,466.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,559.00. The plan does not comply with Section 4.02 of the mandatory form plan. Additionally, the Debtors do not appear to be able to fund the plan payments because their updated Schedules I and J filed as exhibits to this Motion show a monthly net income of $1,466.61, which is $92.39 less than the amount needed to fund the plan.

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

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

40.	15-27957-B-13 JPJ-1	DANIELLE KRANZLER-CONYERS AND KENNETH CONYERS Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 11-24-15 [14]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 6, 2016, 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, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed October 12, 2015, will be confirmed.

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

41. 15-28458-B-13 DANIEL/BRITTANY CLARK — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Rick Morin — 12-8-15 [16]

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

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

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

Second, the Statement of Financial Affairs must be amended to include information related to Debtors' construction business at Questions #18 through 25.

Third, the plan cannot be properly assessed for good faith or feasibility pursuant to 11 U.S.C. §§ 1325(a)(3) or (6) because the Debtors did not file a detailed statement showing gross receipts and ordinary and necessary expenses related to their business.

Fourth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The plan proposes to pay a dividend of no less than 60% or approximately $27,000.00. However, the correct monthly disposable income at Line 45 should be $595.56 and the Debtors must pay no less than $35,733.60.

The plan filed October 30, 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.

42. 11-28859-B-13 ROBERT/SANDRA POWELL MOTION TO INCUR DEBT
PR-5 Patrick Riazi 12-21-15 [54]

Tentative Ruling: The Debtors' Motion to Incur New Debt 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 Debtors had filed a previous motion to incur debt for the purchase of the same 2006 Mercedes Benz E350 4D ("Vehicle"). That motion was heard and denied without prejudice on December 9, 2015 (dkt. 51). Debtors now file a new motion addressing in their Declaration the court's earlier concerns.

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

This motion seeks permission to purchase from a private seller the same Vehicle at the total purchase price of $8,900.00 with monthly payments of $148.34 for 60 months at an annual interest rate of 15.99%.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. First, the Debtors are able to afford the monthly payments because they have paid off their Toyota Scion and Dodge 1500 in August and May 2015, respectively, and the $495.25 that was used for these two cars will now be used toward the $148.34 payment requested. Second, while the Debtors' Schedules B and D show that they already have three other vehicles, these vehicles are each used by Debtor Robert Powell and two full-time college daughters; Co-Debtor Sandra Powell is without a vehicle to commute to work and use on a daily basis. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

43. 15-28862-B-13 LUCAS/VANESSA HUEZO — MOTION TO VALUE COLLATERAL OF PACIFIC SERVICE CREDIT UNION 11-17-15 [10]
RHM-1 Robert Hale McConnell

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion to Value Property as Collateral in the Chapter 13 for Pacific Service Credit Union 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 Pacific Service Credit Union at $15,797.00.

The motion filed by Debtors to value the secured claim of Pacific Service Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2013 Volkswagen Passat ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $15,797.00 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).

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 November 20, 2015, by Pacific Service Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 14, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $25,715.60. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $15,797.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

44.	15-28163-B-13 JPJ-1	JOHN LEIJA AND SYLVIA REYES Catherine King	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-15-15 [17]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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 December 18, 2015. The confirmation hearing for the amended plan is scheduled for February 3, 2016. The earlier plan filed October 20, 2015, is not confirmed.

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

45. 15-26967-B-13 JEREMIAH/SAMANTHA BAGULA MOTION TO CONFIRM PLAN
MOH-1 Michael O'Dowd Hays 11-16-15 [34]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 16, 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.

46. 15-28367-B-13 JAMES/LAURIE HOLDEN
JHW-1 Lucas B. Garcia
Thru #48

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
11-20-15 [14]

Tentative Ruling: The Objection to Confirmation of Proposed Chapter 13 Plan (2013 Ford Fusion) was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

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

Ford Motor Credit Company LLC ("Creditor") holds a purchase money security interest in a 2013 Ford Fusion. Creditor objects to confirmation on three grounds: (1) a cramdown does not apply because the purchase-money loan was incurred less than 910 days prior to the filing of the petition, (2) the Debtors' should pay Creditor's claim with at least 5.25% interest because the Debtors risk defaulting under the plan and the value of the vehicle is depreciating, and (3) the Debtors incorrectly state "N" under "Purchase Money Security Interest personal property" in Class 2 of the plan when the Creditor in fact holds a purchase money security interest.

Debtors have filed a response conceding to the first and third objections and state that they will file an amended plan. However, Debtors object to the increased interest rate of 5.25% but do not explicitly state what the interest rate should be. Instead, the Debtors vaguely state that "the lower of the two interest rates should be chosen" and that "the lowest interest rate is reasonable to protect [the Creditor's] interests." Nonetheless, the court is not persuaded by Creditor's argument that the interest rate should be 5.25%, or 2% higher than the prime rate of interest of 3.25%.

The plan filed October 28, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

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

47. 15-28367-B-13 JAMES/LAURIE HOLDEN
JHW-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
11-20-15 [19]

Tentative Ruling: The Objection to Confirmation of Proposed Chapter 13 Plan (2014 Ford F150) was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

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

Ford Motor Credit Company LLC ("Creditor") holds a purchase money security interest in a 2014 Ford F150. Creditor objects to confirmation on three grounds: (1) a cramdown does not apply because the purchase-money loan was incurred less than 910 days prior to the filing of the petition, (2) the Debtors' should pay Creditor's claim with at least 5.25% interest because the Debtors risk defaulting under the plan and the value of the vehicle is depreciating, and (3) the Debtors incorrectly state "N" under "Purchase

Money Security Interest personal property" in Class 2 of the plan when the Creditor in fact holds a purchase money security interest.

Debtors have filed a response conceding to the first and third objections and state that they will file an amended plan. However, Debtors object to the increased interest rate of 5.25% but do not explicitly state what the interest rate should be. Instead, the Debtors vaguely state that "the lower of the two interest rates should be chosen" and that "the lowest interest rate is reasonable to protect [the Creditor's] interests." Nonetheless, the court is not persuaded by Creditor's argument that the interest rate should be 5.25%, or 2% higher than the prime rate of interest of 3.25%.

The plan filed October 28, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part and the plan is not confirmed.

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

48.	15-28367-B-13 JPJ-1	JAMES/LAURIE HOLDEN Lucas B. Garcia	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 12-8-15 [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 Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan, the Debtors having filed a response requesting the court to sustain the Trustee's Objection and to deny confirmation of the plan.

The plan filed October 28, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

49. 15-24470-B-13 DONNA VANDERHORST MOTION TO CONFIRM PLAN
RJ-8 Richard L. Jare 11-11-15 [94]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

50. 14-25477-B-13 TERRI BANKS MOTION TO MODIFY PLAN
PLC-8 Peter L. Cianchetta 11-17-15 [101]

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

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming account for all payments made by the Debtor to date and clarify the date plan payments are due by stating the following: The Debtor has paid a total of $4,458.77 to the Trustee through October 25, 2015. Commencing November 25, 2015, monthly plan payments shall be $150.00 for the remainder of the 60-month plan.

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

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

51. 11-26978-B-13 STEVEN/DIXIE COOKSEY MOTION TO SELL
EJS-1 Eric John Schwab 12-23-15 [98]

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. Debtors propose to sell the property described as 3249 Rock Creek Way, Roseville, California.

The proposed purchaser of the property Kathleen Nicols agreed to purchase the Property for $482,000.00. The payoff of first mortgage and interest is $141,102.82, commission is $24,100.00, and property taxes are $51.43. The seller shall receive an estimated $312,911.18. As stated in the Declaration of Dixie Cooksey, no proceeds will be turned over to the Chapter 13 Trustee because the plan is completed and creditors already received 100% of their claims.

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

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

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

52. 15-20179-B-13 LARRY/MARIANNE HAVENS MOTION TO MODIFY PLAN
HDR-1 Harry D. Roth 11-30-15 [27]

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

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

Due to priority claims filed by the Franchise Tax Board and the Internal Revenue Service that list claims greater than that scheduled by the Debtors, the plan will take approximately 71 months to complete. This exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

53. 14-27780-B-13 EDWARD MEDINA
HDR-6 Harry D. Roth
Thru #54

OBJECTION TO CLAIM OF WILMINGTON SAVINGS FUND SOCIETY, FSB, CLAIM NUMBER 6
11-19-15 [89]

Tentative Ruling: The Debtor's Objection to Arrearage in Claim No. 6 of Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, Not In Its Individual Capacity but Solely as Indenture Trustee for ARLP Securitization Trust, Series 2015-1 Filed on July 31, 2015, has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain the objection to Claim No. 6 of Wilmington Savings Fund Society and disallow the claim in its entirety.

Debtor Edward Joseph Medina, Sr. ("Debtor") objects to the arrearage portion of the secured claim filed in the amount of $6,347.40 in Claim No. 6 included in the proof of claim filed on July 31, 2015, by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely as indenture trustee for ARLP Securitization Trust, Series 2015-1 ("Creditor"). For the reasons explained below, the Debtor's objection will be sustained and Creditor's proof of claim will be disallowed in its entirety. *See SLEFCU v. Barker (In re Barker)*, 2014 WL 1273765 at *3 (9th Cir. BAP 2014) ("Therefore, under Rule 3002(c), *a proof of claim must be disallowed* if it is untimely.") (Emphasis added).

The Debtor filed his Chapter 13 petition on July 30, 2014. The non-governmental bar date for filing proofs of claim was set as December 3, 2014. Creditor filed its proof of claim on July 31, 2015. Creditor thus filed its proof of claim nearly eight months after the non-governmental bar date.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(a)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. A proof of claim in a Chapter 13 case is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a). *See* Rule 3002(c). That date here, *i.e.*, December 3, 2014, is consistent with the date first set for the § 341 meeting in this case which was September 4, 2014.

Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances listed in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). Creditor does not argue that any of those six situations apply in this case. Instead, relying on *Pioneer Invs. v. Brunswick Assoc.*, 507 U.S. 380 (1993), Creditor argues that its untimely proof of claim should be allowed on the basis of excusable neglect. Creditor's argument lacs merit.

The excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day

> time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. Creditor's request to allow its late-filed proof of claim on the basis of excusable neglect is, therefore, denied.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow that late-filed proof of claim. Therefore, the Debtor's objection to Creditor's proof of claim filed on July 31, 2015, is sustained that proof of claim as Claim No. 6 is disallowed in its entirety.

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

54. 14-27780-B-13 EDWARD MEDINA — MOTION TO MODIFY PLAN
HDR-7 Harry D. Roth — 11-30-15 [94]

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

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

The plan specifies arrearage dividend of $0.00 to Bank of America in Class 1. It is not possible for the Chapter 13 Trustee to pay the claim of this creditor through the plan with an arrearage dividend specified at $0.00.

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

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

55. 15-28480-B-13 ARTHUR/TRISHA WHITTEN
JPJ-1 Peter G. Macaluso

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

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 overrule the objection, deny the motion to dismiss, and confirm the plan.

First, the Debtors have provided the Trustee evidence of their social security cards and the continued meeting of creditors held on December 17, 2015, has been concluded.

Second, the Debtors filed an amended petition on December 17, 2015, to reflect the previous Chapter 7 case that was filed in the Eastern District of California (case # 09-44007).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed October 30, 2015, is confirmed.

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

56. 15-28580-B-13 TANYA YANCEY
JPJ-1 Peter G. Macaluso
Thru #57

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-8-15 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 plan payment in the amount of $120.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $146.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, due to the fact that the plan payment does not equal the aggregate of the dividends, the plan will take approximately 73 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).

Third, the Debtor has not amended the Statement of Financial Affairs Question #5 to disclose the surrender of a vehicle in October 2015.

The plan filed November 3, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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

57. 15-28580-B-13 TANYA YANCEY
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF DAYTONA MOTORS
12-2-15 [14]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion to Value Collateral of Daytona Motors 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 Daytona Motors at $2,264.00.

The motion filed by Debtor to value the secured claim of Daytona Motors ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2000 Mercedes Benz ML430 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $2,264.00 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 Number 3 filed on December 10, 2012, by Daytona Motors in Debtor's previous case (# 12-39383) is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on April 5, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $6,632.34. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $2,264.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

58. 15-28481-B-13 JPJ-1 | ROGER/LYNNE-RUTH SCHALLER
Ashley R. Amerio | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-8-15 [14]

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

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

The Joint Debtor did not submit proof of her identity to the Trustee at the December 3, 2015, meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(A). The meeting of creditors was subsequently continued to December 29, 2015, to allow the Joint Debtor the opportunity to provide such evidence. The Joint Debtor, Debtor, and Counsel did not appear at the continued meeting of creditors.

The plan filed October 30, 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.

59. 15-28282-B-13 RONNALD/DEBORAH WROTEN — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Peter G. Macaluso — 11-25-15 [17]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(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 and confirm the plan filed October 26, 2015, with the following modification: Plan Payments shall be $855.00 x 2, $890.00 x 39, and $985.00 x 9 for a total plan length of 60 months.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed October 26, 2015, is confirmed.

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

60. 15-28583-B-13 DRUE BROWN
WSS-1 W. Steven Shumway

MOTION TO VALUE COLLATERAL OF BOSCO CREDIT, LLC
12-8-15 [16]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Value Property Located at 9 Shorecliff Court, Sacramento, California 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 by the creditor and a response by the Debtor have been filed.

The motion will be determined at the scheduled hearing.

61. 11-37784-B-13 TRACY/DENNIN WINGETT — MOTION TO MODIFY PLAN
EAS-1 Edward A. Smith — 11-24-15 [123]
Thru #62

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion to Confirm Second Modified Chapter 13 Plan Dated November 24, 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 November 24, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

62. 11-37784-B-13 TRACY/DENNIN WINGETT — CONTINUED MOTION TO DISMISS CASE
JPJ-2 Edward A. Smith — 9-24-15 [99]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

Because the plan proposed by the Debtors is confirmable at Item #61, the Trustee's Motion to Dismiss Case is denied as moot.

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

63. 15-22784-B-13 JOSEPH/HEATHER ADKINS CONTINUED MOTION TO RECONSIDER
DBJ-3 Bonnie Baker 10-14-15 [96]

Final Ruling: No appearance at the January 6, 2016 hearing is required. MATTER REMOVED FROM CALENDAR. COURT ENTERED MEMORANDUM DECISION ON 12/14/15 DENYING TRI COUNTIES BANK'S MOTION FOR RECONSIDERATION.

64. 11-38992-B-13 SHANE/LISA FANTONI
JPJ-2 Peter G. Macaluso
Thru #65

CONTINUED MOTION TO DISMISS CASE
10-5-15 [58]

Tentative Ruling: The court issues no tentative ruling.

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

The motion will be determined at the scheduled hearing.

65. 11-38992-B-13 SHANE/LISA FANTONI
PGM-1 Peter G. Macaluso

MOTION TO AVOID LIEN OF HOLT OF CALIFORNIA
11-17-15 [68]

Tentative Ruling: The Motion to Avoid, in Part, the Fixing of Judgment Lien of Holt of California Pursuant to 11 U.S.C. § 522(f)(1)(A) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion to avoid judicial lien for all amounts in excess of $9,298.00 and except to the extent already paid by the trustee.

This is a request for an order avoiding the judicial lien of Holt of California ("Creditor") against the Debtors' personal property ("Personal Property"). The Debtors do not own any real property. The Personal Property is valued at a total of $57,300.00 as listed in Schedule B of the petition.

A judgment was entered against Debtors in favor of Creditor in the amount of $38,260.99. An abstract of judgment was recorded with El Dorado County on January 9, 2010, which encumbers the Personal Property. All other liens recorded against the Personal Property total $24,700.00.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(2), (3), (4), and (5) in the amount of $23,302.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is $9,298.00 in equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the Personal Property and its fixing is avoided in excess of $9,298.00 subject to 11 U.S.C. § 349(b)(1)(B).

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

66. 15-23192-B-13 AMELITO CRUZ AND ROSE MULLEN
WMR-1 William M. Rubendall

MOTION TO MODIFY PLAN
11-25-15 [22]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

The Motion Modify Chapter 13 Plan After Confirmation Filed on November 25, 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 November 25, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

67. 15-26796-B-13 JOHN DICKERSON MOTION TO CONFIRM PLAN
RI-1 Rebecca E. Ihejirika 11-23-15 [42]

Final Ruling: No appearance at the January 6, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 23, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

68.	15-29565-A-13 EJS-3	FRANK/CRYSTAL BARGIEL Eric John Schwab	MOTION TO EXTEND AUTOMATIC STAY O.S.T. 12-22-15 [10]

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.