UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 16, 2016 at 10:00 a.m.

1.	13-29800-B-13 PGM-2	JOSE ARANDA AND FAVIOLA VALENCIA-ARANDA Peter G. Macaluso	MOTION TO MODIFY PLAN 1-28-16 [163]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 4/05/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO APPROVE LOAN MODIFICATION.

2. 16-20303-B-13 MICHELE REED
JPJ-1 Michael David Croddy

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-24-16 [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 continue the trustee's objection and the confirmation to March 30, 2016, at 10:00 a.m. and further extend the time to March 24, 2016, for the Trustee to file any supplemental objections to confirmation based upon any additional information obtained at the continued § 341 meeting.

The meeting of creditors has been continued to March 17, 2016, to allow the Debtor the opportunity to appear telephonically from a U.S. Embassy in London, England. The Trustee must perform a thorough examination of the Debtor under oath before a plan can be confirmed.

3. 15-29507-B-13 VERONICA DUDIN
JPJ-1 Bruce Charles Dwiggins

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [16]

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

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

The plan cannot be fully assessed. Schedule I of the plan lists income on line 8h of $3,100.00 from "Assistance of Ex-Husband." The ex-husband is not a party in the bankruptcy and is not required to give assistance to the Debtor. Because of this, a declaration is required from the ex-husband stating his willingness to give this assistance and evidence of his ability to do so. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015). No declaration has been filed to date. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed December 17, 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.

4.	15-29807-B-7 JPJ-1	TRACI HERRERA James L. Keenan	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-18-16 [20]

CASE CONVERTED: 2/26/16

Final Ruling: No appearance at the March 16, 2016 hearing is required.

The case having previously been converted on February 26, 2016, the Objection is sustained as moot.

5.	16-20109-B-13 JPJ-2	RENATO/MARYROSE PORLARIS Gary Ray Fraley	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR CONDITIONAL MOTION TO DISMISS CASE 2-24-16 [21]

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

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

First, the plan payment in the amount of $2,332.00 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 $2,589.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the plan on file with the court is not signed by either the Debtors or the Debtors' attorney. Although the Debtors' attorney presented the Trustee with a copy of the signed plan at the meeting of creditors on February 18, 2016, the Debtors have not filed a signed copy of the plan with the court as requested by the Trustee at the meeting. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 22, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

6. 15-27710-B-13 SHANE/EDEN JACK — MOTION TO CONFIRM PLAN
HLG-1 Kristy A. Hernandez — 1-22-16 [32]

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

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

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

Second, the plan will take approximately 79 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 Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,085.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and 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.

7. 15-29510-B-13 OSCAR/LILIA BARROGA — MOTION TO VALUE COLLATERAL OF CARMAX
FF-1 Gary Ray Fraley — 2-8-16 [20]
Thru #8

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Motion to Value Secured Portion of Claim of Carmax 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). However, it appears that creditor Carmax was not properly served at the address where notices should be sent and was instead served at the address where payments are sent.

The court's decision is to continue the matter to March 30, 2016, at 10:00 a.m. in order for the Debtors to properly serve the creditor.

8. 15-29510-B-13 OSCAR/LILIA BARROGA — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Gary Ray Fraley — 1-28-16 [16]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

This matter was continued from February 17, 2016, to be heard in conjunction with the motion to value collateral of Carmax at Item #7. The Trustee's other objections relating to delinquency in plan payments and the need to amend Schedule J have been resolved. However, since Item #7 is being continued to March 30, 2016, at 10:00 a.m. to allow for proper service, the Trustee's objection will be continued to that same date and time.

9. 16-20010-B-13 JASON SMITH
JPJ-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [13]

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 March 1, 2016. The Debtor scheduled the confirmation hearing of the amended plan for Wednesday, April 13, 2016, at 10:00 a.m. However, the court will not be holding a Chapter 13 hearing on Wednesday and the matter will instead be heard on Tuesday, April 12, 2016, at 1:00 p.m. The Debtor shall provide an amended notice to all creditors.

The earlier plan filed January 4, 2016, is not confirmed.

10.	12-39713-B-13 MAC-4	DONALD FLAVEL Marc A. Carpenter	CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 12-4-15 [68]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

ORDER CONTINUING TO 4/19/16

11. 11-26415-B-13 RONNIE LE MOTION TO REFINANCE
PGM-1 Peter G. Macaluso 2-17-16 [37]

Tentative Ruling: The Motion to Approve Refinance of Mortgage 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).

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

Debtor's motion and declaration state that he has an offer from LDWholesale to refinance his mortgage. However, there are no exhibits that show the terms offered by LDWholesale. Debtor only provides a Good Faith Estimate (GFE) and Settlement Statement (HUD-1) attached as Exhibits A and B as evidence that there is a refinancing offer. Therefore, the motion is denied without prejudice.

12. 16-20016-B-13 JPJ-1 **Thru #13**
CYNTHIA PAYSINGER
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-18-16 [26]

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 has not provided with the Trustee with evidence of the value of her real property as requested by the Trustee at the meeting of creditors held on February 11, 2016. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $26,750.00. The total amount that will be paid to unsecured creditors is only $0.00.

The Trustee's objection that feasibility depends on the granting of a motion to value collateral for Wells Fargo Bank, N.A. is no longer at issue. The motion to value collateral for Wells Fargo is granted at Item #13.

For the first and second reasons stated above, the plan filed January 5, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

13. 16-20016-B-13 PGM-2
CYNTHIA PAYSINGER
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
2-11-16 [21]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

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

The motion to value filed by Debtor to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 779 Vintage Avenue, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $250,000.00 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 $303,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $9,965.09. 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.

14. 12-26117-B-13 RICHARD/KIM CHAVEZ MOTION TO MODIFY PLAN
RDS-7 Richard D. Steffan 1-29-16 [97]

Tentative Ruling: The Motion to Modify Confirmed 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 properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $111,501.69 to the Trustee through February 25, 2016. Commencing March 25, 2016, monthly plan payments shall be $1,750.00 for the remainder of the plan.

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

15.	16-20018-B-13 JPJ-1	JOJIE GOOSELAW Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-18-16 [26]

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). A written reply has been filed to the objection.

Since feasibility depends on the granting of a motion to value collateral for RC Willey, the court's decision is to continue the hearing of this matter to April 5, 2016, at 1:00 p.m. to be heard in conjunction with the motion to value collateral.

16.	16-20118-B-13 APN-1 **Thru #17**	LESTHER GASTELUM AND ALMA SAQUELARES Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR WELLS FARGO BANK, N.A. 2-9-16 [19]

Tentative Ruling: The Secured Creditor, Wells Fargo Bank, N.A. DBA Wells Fargo Dealer Services's Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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). A written reply has been filed to the objection.

The court's decision is to sustain in part and overrule in part the objection. However, the plan is not confirmed for reasons stated at Item #17.

The Debtors plan does not state that Wells Fargo Bank, N.A. ("Creditor") has a purchase money security interest in personal property in Class 2. On this issue, the Creditor's objection is sustained.

However, the court will overrule Creditor's objection related to increasing monthly adequate protection payments to $339.49 and increasing the interest rate to 6.50% per annum.

First, the Debtors have filed a response agreeing to the valuation of Creditor's 2002 GMC Sierra at $17,455.33. This increased valuation is a difference of $887.33 (or $14.79 per month over the span of 60 months) from the value stated in Debtors' proposed plan. The Debtors state that they can account for this increased valuation by adjusting the adequate protection payments paid to Creditor from $280.00 to $300.00 per month. The court finds that $300.00 per month provides adequate protection and not $339.49.

Second, Creditor proposes increasing the interest rate to 6.50% per annum. However, the Creditor has provided no admissible evidence, in the form of declaration or affidavit in support of its objection, of its assertion that the loan should be repaid at 6.50%.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default.

The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

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

"Moreover, starting from a concededly *low* estimate and adjusting *upward* places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." *Till* at 479. The Creditor has not satisfied its evidentiary burden for adjusting the interest rate upward by 3% from 3.50% to 6.50%.

Nonetheless, the Debtors have agreed to increase the interest rate from 3.50% to 4.50%. As such, the court will overrule Creditor's increased interest rate of 6.50% and allow

Debtors' increased interest rate of 4.50%.

The objection is sustained in part and overruled in part. However, the plan is not confirmed for reasons stated at Item #17.

17.	16-20118-B-13 JPJ-1	LESTHER GASTELUM AND ALMA SAQUELARES Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-24-16 [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). 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 filed a detailed statement showing gross receipts and ordinary and necessary expenses related to income from the operation of a business.

Second, the Debtors have not provided the Trustee with documents related to their business including, but not limited to, a completed business examination checklist, business bank account statements for the 6-month period prior to the filing of the petition, profit and loss statements for November and December 2015, proof of all required insurance, and proof of required licenses and/or permits related to this business. The Debtors have not complied with 11 U.S.C. § 521 and it cannot be determined if the business is solvent and necessary for reorganization.

Third, the Debtors have not amended the Statement of Financial Affairs to include an interest in the business "Saquelares Landscape and Irrigation." Feasibility cannot be properly assessed pursuant to 11 U.S.C. §§1325(a)(4) or (6) without further information regarding the Debtors' interest in this business.

Fourth, the Debtors have not provided the Trustee with a copy of a Broker's Price Opinion (BPO) or appraisal of their residence. The plan cannot be fully or properly assessed pursuant to 11 U.S.C. § 1325(a)(4) until the Trustee has received and reviewed the requested documents pertaining to the value of the property.

Fifth, the plan filed January 21, 2016, does not comply with 11 U.S.C. § 1325(a)(4) as unsecured creditors would receive a higher distribution in a chapter 7 proceeding.

Sixth, the Debtors must complete Means Test Forms B122C-1 and C-2 in their entirety in order to determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B).

The plan filed January 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

18. 15-26321-B-13 MARCELINO MANZANO
JPJ-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-24-16 [41]

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 has not provided the Trustee with a Class 1 Checklist and Authorization to Release. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, the Debtor has not filed with the court a Chapter 13 Statement of Current Monthly Income and Calculation of Disposable Income (Means Test). The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtor has not provided the Trustee with evidence of updated income, including social security statements and bank statements, for the 60-day period preceding the conversion of this case. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 19, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

19. 15-29322-B-13 JAMES/TRACEE LEWIS
ALF-6 Ashley R. Amerio
Thru #20

MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC
2-17-16 [67]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

The court's decision is to value the secured claim of Ocwen Loan Servicing, LLC at $0.00.

The motion to value filed by Debtors to value the secured claim of Ocwen Loan Servicing, LLC ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 8642 Duryea Drive, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $292,309.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $354,156.00. Ocwen Loan Servicing, LLC's second deed of trust secures a claim with a balance of approximately $64,302.00. 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.

20.	15-29322-B-13 ALF-7	JAMES/TRACEE LEWIS Ashley R. Amerio	MOTION TO VALUE COLLATERAL OF CAPITAL ONE HOME LOANS, LLC 2-17-16 [72]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

The court's decision is to value the secured claim of Capital One Home Loans, LLC at $0.00.

The motion to value filed by Debtors to value the secured claim of Capital One Home Loans, LLC ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 8642 Duryea Drive, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $292,309.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $354,156.00. The second deed of trust secures a claim with a balance of approximately $64,302.18. Capital One Home Loans, LLC's third deed of trust secures a claim with a balance of approximately $52,750.00. 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.

21. 15-29825-B-13 VASUDEVA BENARD
JPJ-1 Peter G. Macaluso
Thru #22

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [37]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 4/05/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION, WESTLAKE FINANCIAL SERVICES, AND AARON'S SALES AND LEASING.

22. 15-29825-B-13 VASUDEVA BENARD
RTD-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SCHOOLS FINANCIAL CREDIT UNION
2-16-16 [26]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 4/05/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION, WESTLAKE FINANCIAL SERVICES, AND AARON'S SALES AND LEASING.

23.	12-29929-B-13 PGM-1	CHARLES/JULITA BENTZ Peter G. Macaluso	CONTINUED MOTION TO APPROVE LOAN MODIFICATION 1-25-16 [55]

Tentative Ruling: The Motion for Order Approving 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).

This matter was continued from March 2, 2016, because the court was unable to determine who the loan modification is with due to discrepancy with the motion, declaration, exhibits, and plan filed October 25, 2012.

The matter will be determined at the scheduled hearing.

24. 15-29129-B-13 SUZANNE RYAN-BEEDY
MDE-1 Lucas B. Garcia

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
1-14-16 [19]

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

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

This matter was continued from February 3, 2016, to allow the Debtor to file a reply by February 17, 2016, and for the creditor to file any response by February 25, 2016. The Debtor has not filed any reply.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $149,144.22 in pre-petition arrearages (Claim No. 1). 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.

The plan filed November 24, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

25. 15-28932-B-13 DONALD/VIRGINIA THOMMEN MOTION TO CONFIRM PLAN
JDM-1 John David Maxey 1-28-16 [36]

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

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

First, the Joint Debtor has not provided the Trustee with an acceptable valid proof of her entire social security number, such as her original social security card.

Second, the plan does not provide treatment for the secured claim filed by the Internal Revenue Service in the amount of $13,098.00. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

Third, the plan does not provide treatment for the priority claim filed by the Internal Revenue Service in the amount of $4,846.97. The plan does not comply with 11 U.S.C. § 1322(a)(2).

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

26. 16-20333-B-13 JPJ-2 | ANDREW SANDERSON-SPROUL
Gary Ray Fraley | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-24-16 [20]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 $2,345.00 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 $2,605.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the Debtor has not filed a signed copy of the plan with the court as requested by the Chapter 13 Trustee at the meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtor has claimed his interest in an estimated 2015 federal tax refund with a value of $3,500.00 as exempt under 15 U.S.C. § 1673. However, California has opted out of the federal exemptions and has elected state exemptions for its citizens pursuant to California Code of Civil Procedure § 703.130(a). The Debtor has not cited any authority for the proposition that he is entitled to claim an exemption under 15 U.S.C. § 1673 and the Debtor has, therefore, over-exempted the estimated federal tax refund by $3,500.00.

Fourth, the Debtor has claimed his interest in an estimated 2015 state tax refund valued at $500.00 as exempt under California Code of Civil Procedure § 704.070 in the full amount of $500.00. The tax refund does not qualify as "paid earnings" pursuant to California Code of Civil Procedure § 704.070 and the exemption is therefore improper. The Debtor has over-exempted the estimated state tax refund by $500.00

Fifth, the Debtor has claimed his interest in cash in the amount of $58.00 and bank accounts with balances of $1,259.66. Pursuant to California Code of Civil Procedure § 704.070(b)(2), the Debtor may not claim the entire asset values as exempt since only 75% of the paid earnings that can be traced into deposit accounts are exempt. Thus, the Debtor has over-exempted the cash amount and bank account balance by the aggregate amount of $314.91.

Sixth, the Chapter 13 Trustee (and not the U.S. Trustee) has filed an objection to the Debtor's claim of exemptions, which will be heard on April 5, 2016, at 1:00 p.m. The court's decision on that matter will affect the total value of non-exempt property in the estate and the amount that will be paid to unsecured creditors.

The plan filed January 22, 2016, 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.

27. 15-25538-B-13 MICHAEL VIVES
TLA-1 Thomas L. Amberg

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
1-26-16 [30]

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

The court's decision is to sustain the objection and deny without prejudice the request for attorney's fees.

This matter relates to Bank of America, N.A.'s objection to confirmation (heard on September 16, 2015, dkt. 20, and September 23, 2015, dkt. 23). Creditor is now seeking $1,000.00 in attorney's fees categorized as postpetition charges. The Creditor filed Claim No. 12 on November 9, 2015, stating a secured claim in the amount of $133,074.31 against Debtor's real property.

The court finds that the Creditor has failed to itemize the work performed in seeking discovery compliance, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of the $1,000.00 in attorney's fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Debtor's objection is sustained and attorney's fees are disallowed.

28. 15-26939-B-13 JUANA CABRERA AND CUONG LE
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
1-25-16 [35]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Motion to Confirm Debtors' First Amended Plan Filed January 25, 2016, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 25, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

29. 15-27843-B-13 TARILYN ELLIOTT MOTION TO CONFIRM PLAN
CA-1 Michael David Croddy 2-2-16 [33]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Debtor's Motion to Confirm Debtor's First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy 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 February 2, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

30. 16-20848-B-13 SCOTT/LORI ARNOLD
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
3-3-16 [14]

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

The court's decision is to deny with prejudice the motion to extend automatic stay.

Debtors seek 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 Debtors' prior bankruptcy case was dismissed on September 3, 2015, after Debtors failed to make plan payments (Case No. 13-20409, Dkt. 41). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 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 Debtors assert that they became delinquent in their previous case filed in 2013 because they were unaware of the missed payment since they had changed addresses and their previous attorney, Sally Gonzales, did not inform them of the missed payment or that their case would be dismissed. Debtors assert that, had she contacted them, they would have brought the payments current. Debtors state that their situation has changed because they will promptly notify the court of any address changes. They also assert that their current attorney, Peter Macaluso, will notify the Debtors should they miss a plan payment. The Debtors state that they are able to make plan payments of $600.00 per month starting March 25, 2016.

While this is the first time that the Debtors changed their address during the pendency of a bankruptcy case, this is the Debtors' fourth filed bankruptcy. Because of this, the Debtors should be familiar with the bankruptcy process and the need to timely file a change of address so that they may be properly served. The Notice of Default and Application to Dismiss (dkt. 37) was served on July 28, 2015, to Debtors' previous address. Yet it was not until November 11, 2015 - nearly four months later - that the Debtors filed a change of address with the court.

The Debtors have not 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 denied with prejudice and the automatic stay is not extended for all purposes and parties.

31.	15-23950-B-13 JPJ-1	STEVEN MUEHLBERG Robert W. Fong	OBJECTION TO CLAIM OF CAVALRY INVESTMENTS, LLC, CLAIM NUMBER 4 1-14-16 [19]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 4-1 of Cavalry Investments, LLC and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry Investments, LLC ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $826.97. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to documents attached to the proof of claim, the last payment was received on or about September 17, 1999, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 14, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, Cavalry Investments, LLC's claim is disallowed in its entirety.

32. 08-31951-B-13 BRUCE RISEMAN
JPJ-3 Gabriel E. Liberman
Thru #33

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-11-16 [123]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

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

The Debtor filed his petition on August 25, 2008, and filed an amended Schedule C on August 6, 2015, showing an interest in a medical malpractice tort claim in the amount of $1.00 as exempt under California Code of Civil Procedure § 703140(b)(11)(D). Schedule B filed on August 6, 2015, states that the claim was initiated against the Veterans' Affairs in November 2011, which is after the filing of the petition. Exemptions are determined as of the date of the bankruptcy petition was filed. *In re Chappell*, 373 B.R. 73 (9th Cir. B.A.P. 2007). Therefore, the Trustee's objection is sustained and the claimed exemption is disallowed.

33. 08-31951-B-13 BRUCE RISEMAN
UST-1 Gabriel E. Liberman

MOTION TO CONVERT CASE TO CHAPTER 7
2-3-16 [117]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

MOTION DISMISSED BY STIPULATION ENTERED 3/04/16.

34. 15-29851-B-13 RICK CARRASCO
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [16]

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

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

First, the Debtor did not appear at the duly noticed first meeting of creditors set for February 11, 2016, as required pursuant to 11 U.S.C. § 343.

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

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

Fourth, the plan payment in the amount of $1,000.00 does not equal the aggregate of the Trustee's fees and monthly payment for administrative expenses. The aggregate of the monthly amounts plus the Trustee's fee is $1,479.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Fifth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income, specifically $1,191.32 for voluntary retirement contributions, is not being applied to make payments to unsecured creditors. Without the expense for voluntary retirement contributions, the Debtor's monthly disposable income is $392.93 and the Debtor must pay no less than $23,575.58 to unsecured creditors. The plan pays only $0.00 to unsecured creditors.

Sixth, the plan will take approximately 91 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed December 29, 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.

35. 15-22956-B-13 JPJ-3 — MARSHALL MASSON AND LISA ACKERMAN-MASSON — Guy David Chism — MOTION TO MODIFY PLAN — 2-9-16 [105]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated February 9, 2016, 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 Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,600.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

36. 16-20557-B-13 CDN-1 **Thru #37**

DELMAR/KAREN REYNOLDS
Clark D. Nicholas

MOTION TO VALUE COLLATERAL OF CITY LOAN (CITY TITLE LOAN, LLC)
2-11-16 [13]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

The court's decision is to value the secured claim of City Loan (City Title Loan LLC) at $8,000.00.

The motion filed by Debtors to value the secured claim of City Loan (City Title Loan LLC) ("Creditor") is accompanied by the Declaration of Delmar S. Reynolds. Debtors are the owners of a 2005 Dodge 2500 pickup ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owners, 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 by City Loan 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 November 27, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,642.95. 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 $8,000.00. *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.

37. 16-20557-B-13 CDN-2

DELMAR/KAREN REYNOLDS
Clark D. Nicholas

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
2-11-16 [17]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Debtor's [sic] Motion to Value Collateral of AmeriCredit Financial Services, Inc. (dba GM Financial) 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 deny without prejudice the motion to value.

The motion filed by Debtors to value the secured claim of AmeriCredit Financial Services, Inc. (dba GM Financial) ("Creditor") is accompanied by the Declaration of Delmar S. Reynolds. Debtors are the owners of a 2011 Jeep Patriot ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $8,000.00 as of the petition filing date. As the owners, 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. 3 filed by AmeriCredit Financial Services, Inc. (dba GM Financial) is the claim which may be the subject of the present motion.

Discussion

The Debtors do not provide any information in their motion, declaration, or supporting exhibits as to the date the purchase-money loan for the vehicle was incurred. Additionally, Proof of Claim No. 3 filed by AmeriCredit Financial Services, Inc. (dba GM Financial) does not provide the court with any information to resolve this issue. Thus, the court cannot determine whether the purchase-money loan was incurred more than 910 days prior to the filing of the petition and whether a cram down is allowed. Because of this, the valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

38. 15-28163-B-13 JOHN LEIJA AND SYLVIA REYES
CK-2 Catherine King

MOTION TO CONFIRM PLAN
2-1-16 [31]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated February 1, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on March 3, 2016. The confirmation hearing for the amended plan is scheduled for April 19, 2016. The earlier plan filed February 1, 2016, is not confirmed.

39. 12-30166-B-13 ALEXANDER MILLER
PGM-2 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
2-16-16 [43]

Tentative Ruling: The Motion for Order Approving 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,445.68 a month to $2,032.01 a month. The new monthly loan payment includes the escrow payment of $741.84 per month. The first payment was due on February 1, 2016, as indicated in the motion and the Wells Fargo Loan Modification agreement (dkt. 46, exh. A) and is due each subsequent month. Debtor asserts that the modification does not affect the distribution to unsecured creditors who are to be paid no less than 0% in the original plan.

The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

The Trustee has filed an opposition requesting that the Debtor clarify treatment of Wells Fargo Bank in the plan. The modified plan filed April 22, 2015, and confirmed on June 12, 2015, provides for Wells Fargo Bank in Class 1, which requires the Trustee to make monthly contract installment payments. However, the Debtor's motion to approve loan modification states that the Debtor will make payments directly to Wells Fargo Bank. The Debtor has filed a response to the Trustee's opposition and states that he will file, set, and serve a modified plan.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. The motion to approve loan modification is granted on the condition that the Debtor file and set for hearing a modified plan by March 30, 2016.

40. 15-28367-B-13 JAMES/LAURIE HOLDEN — OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
JHW-2 Lucas B. Garcia — 2-8-16 [48]
Thru #42

Final Ruling: No appearance at the March 16, 2016 hearing is required.

DISMISSED BY STIPULATION ENTERED 3/15/16.

41. 15-28367-B-13 JAMES/LAURIE HOLDEN — OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
JHW-2 Lucas B. Garcia — 2-8-16 [53]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

DISMISSED BY STIPULATION ENTERED 3/15/16.

42. 15-28367-B-13 JAMES/LAURIE HOLDEN — MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia — 1-19-16 [41]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated January 19, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan. The only objection to confirmation was that of Ford Motor Credit Company, LLC at Items #40 and 41. The parties have entered into a stipulation agreeing to an interest rate of 3.5% per annum through the Chapter 13 plan for both the 2013 Ford Fusion and the 2014 Ford F140. The amended plan filed on January 19, 2016, provides for Ford Motor Credit Company, LLC's claim in Class 2 at an interest rate of 3.5%.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

43. 15-29869-B-13 MISTY HAYS
JPJ-1 Rupert Corkill

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-18-16 [18]

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

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

First, the Debtor 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).

Second, Section 2.07 of the plan does not specify a monthly payment for administrative expenses.

Third, the plan does not specify a minimum dividend to Class 7 general unsecured creditors.

Fourth, the plan is not feasible because Schedule J filed December 29, 2015, shows a monthly net income of negative $76.13 and yet the proposed plan payment is $397.72. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the treatment of claims for Kay Jewelers and Montery Financial/Wags Landing is unclear because these creditors are listed in both Class 1 and Class 2 of the plan.

Sixth, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

The plan filed January 11, 2016, 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.

44. 16-20269-B-13 BENJAMIN BROWN
JPJ-1 Matthew J. Gilbert
Thru #45

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-24-16 [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 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 $662.00 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 $771.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, feasibility depends on the granting of a motion to value collateral of Travis Credit Union for a 2013 Hyundai Sonata. That motion is denied with prejudice for reasons stated at Item #45.

The plan filed January 19, 2016, 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.

45. 16-20269-B-13 BENJAMIN BROWN
MG-1 Matthew J. Gilbert

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
2-1-16 [12]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Motion to Value Collateral of Travis 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 deny with prejudice the motion to value collateral of Travis Credit Union.

The motion filed by Debtor to value the secured claim of Travis Credit Union

("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,486.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by Travis 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 July 10, 2014 (Proof of Claim No. 3, p. 8), which is less than 910 days prior to filing of the petition. Because the contract for finance of the vehicle was signed less than 910 days prior to the filing of the bankruptcy, the Debtor is prevented from lien stripping. Therefore, the valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied with prejudice.

46. 15-24470-B-13 DONNA VANDERHORST
RJ-10 Richard L. Jare

MOTION TO SELL FREE AND CLEAR OF LIENS
2-25-16 [113]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Order Permitting Sale of Property Free and Clear of Lien 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 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 5897 Bamford Drive, Sacramento, California ("Property").

The proposed purchaser of the property Jimizzy, LLC has agreed to purchase the Property for $58,000.00. The sale is an arms length transaction. The first and only deed of trust is with PennyMac Loan Services, LLC and Claim No. 5 represents the sum to be $23,127.04. PennyMac Loan Services, LLC has filed a non-opposition to the motion on the condition that its lien be paid in full from the proceeds of the sale or with its approval. The judgment lien against the property by Fairlane Credit, LLC has already been avoided by the court's order. Dkts. 31, 41.

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.

47. 11-26978-B-13 EJS-3 | STEVEN/DIXIE COOKSEY
Eric John Schwab | MOTION FOR SUGGESTION OF DEATH, MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE FOR OR SUCCESSOR TO THE DECEASED DEBTOR AND MOTION FOR CONTINUED ADMINISTRATION OF THE CASE
2-5-16 [116]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

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

The court's decision is to take notice of the death of Debtor Steven Thomas Cooksey, substitute the surviving Joint Debtor who is appointed representative of the estate, and authorize the Trustee to administer the case to discharge and closure.

Joint Debtor Dixie Lynne Cooksey gives notice of death of her husband and Debtor Steven Thomas Cooksey and requests the court substitute Dixie Lynne Cooksey in place of her deceased spouse for all purposes within this Chapter 13 proceeding. The Chapter 13 Plan was completed with creditors receiving 100% of their claims and a Notice to Debtor of Completed Plan Payments and of Obligation to File Documents was issued on November 2, 2015. Debtor filed her 1328 certificate on December 3, 2015 (dkt. 89) and is also filing a 1328 certificate for deceased Co-Debtor Steven Thomas Cooksey.

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, Joint Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. The Chapter 13 Plan was already completed on November 2, 2015, with creditors receiving 100% of their claims. Joint Debtor Dixie Lynne Cooksey, in

anticipation of being appointed as her late husband's successor, will be filing the 1328 certificate for Debtor Steven Thomas Cooksey. Based on the evidence provided, the court determines that further administration of this Chapter 13 case to discharge and closure is in the best interests of all parties. The court grants the motion.

48. 14-32183-B-13 NEVELL WALLACE AND ANGELA PRUDHOMME-WALLACE
SDB-1 W. Scott de Bie

MOTION TO MODIFY PLAN
1-29-16 [22]

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

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

The modified plan does not specify a cure of the post-petition arrearage owed to America's Servicing Company including a specific post-petition arrearage amount, interest rate, and monthly dividend.

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

49. 15-28583-B-13 DRUE BROWN
Thru #51 W. Steven Shumway

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
12-10-15 [21]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 3/30/16 AT 10:00 A.M. BY ORDER ENTERED 3/14/16.

50. 15-28583-B-13 DRUE BROWN
JPJ-1 W. Steven Shumway

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-23-15 [26]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 3/30/16 AT 10:00 A.M. BY ORDER ENTERED 3/14/16.

51. 15-28583-B-13 DRUE BROWN
WSS-1 W. Steven Shumway

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

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 3/30/16 AT 10:00 A.M. BY ORDER ENTERED 3/14/16.

52. 16-20783-B-13 JAMES/AMANDA DOMSIC
TLA-1 Thomas L. Amberg
Thru #53

MOTION TO AVOID LIEN OF SGA DESIGN GROUP, PC
2-16-16 [8]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Motion to Avoid Judgment Lien Pursuant to 11 USC 522(f) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of SGA Design Group, P.C. ("Creditor") against the Debtors' property commonly known as 8904 Carlisle Avenue, Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $8,312.63. An abstract of judgment was recorded with Sacramento County on October 16, 2015, which encumbers the Property. All other liens recorded against the Property total $157,659.00 (1st DOT at $117,659.00 plus 2nd DOT at $40,000.00).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $212,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

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

53. 16-20783-B-13 JAMES/AMANDA DOMSIC
TLA-2 Thomas L. Amberg

MOTION TO AVOID LIEN OF US FOODS, INC.
2-16-16 [14]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Motion to Avoid Judgment Lien Pursuant to 11 USC 522(f) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of US Foods, Inc. ("Creditor") against the Debtors' property commonly known as 8904 Carlisle Avenue, Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $12,420.38. An abstract of judgment was recorded with Sacramento County on October 30, 2015, 2015, which encumbers the Property. All other liens recorded against the Property total $157,659.00 (1st DOT at $117,659.00 plus 2nd DOT at $40,000.00 plus SGA Design Group, P.C. judgment lien at $8,312.63).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $212,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

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

54. 15-29984-B-13 JPJ-1 — ANDREW/PATRICIA WRIGHT — Cara M. O'Neill — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-18-16 [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). No written reply has been filed to the objection.

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

First, the Debtors did not appear at the duly noticed first meeting of creditors set for February 11, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the plan payment in the amount of $1,575.00 does not equal the aggregate of the Trustee's fees, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,920.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the Debtors' disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form B22C-2) shows that the Debtors' monthly disposable income is $1,562.07 and the Debtors must pay no less than $93,724.20 to general unsecured creditors. It appears that the plan will pay only $8,512.20 to Class 7 unsecured creditors. The plan does not comply with 11 U.S.C. § 1325(b)(1)(B).

The plan filed December 31, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

55. 13-29187-B-13 TOG-1 — MIGUEL ACEVEDO AND SYLVIA TORRES — Thomas O. Gillis — MOTION TO INCUR DEBT — 3-1-16 [20]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion of Debtors for an Order Allowing Debtors to Purchase a Home and Incur Debt 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 and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase real property located at 6325 Di Lusso Drive, Elk Grove, California, the total purchase price of which is $285,000.00. The Debtors have obtained a Federal Housing Administration (FHA) loan at 4.5% interest for 30 years per month, including escrow. The monthly payment on the home loan will be $1,959.59 per month, including escrow. The Debtor's rent payment at the time the case was filed was $1,750.00 per month and they assert that they are able to afford the increased monthly payment. Additionally, the purchase will not adversely affect creditors since the Debtors' confirmed plan pays 100% to unsecured creditors and the plan will not be modified by the purchase of the real property.

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. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

56. 16-20188-B-13 SUSAN CARRILLO MOTION TO SELL
WW-2 Mark A. Wolff 2-23-16 [14]

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

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

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 9098 Chantal Way, Sacramento, California ("Property"). Debtor is the owner of a 50% interest in the Property and the other 50% interest is held by Debtor's sister. Debtor and her sister intend to sell the property because it requires too much upkeep and Debtor's two daughters are now grown and no longer live in the home.

The proposed purchasers of the property Steven Trillas and Valerie Trillas have agreed to purchase the Property for $285,000.00. The approximate amount owing on the Property at the time this case was filed was $235,297.00. Through the sale of the Property, all liens and security interests encumbering the Property will be paid in full, or pursuant to the agreement of the parties.

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.

57. 11-29591-B-13 BRIAN SAECHAO MOTION FOR CONTEMPT
PLC-6 Peter L. Cianchetta 2-10-16 [72]

Final Ruling: No appearance at the March 16, 2016 hearing is required.

CONTINUED TO 4/05/16 AT 1:00 P.M. BY ORDER ENTERED 3/02/16.

58. 15-27491-B-13 SALLY YATES MOTION TO CONFIRM PLAN
RLC-3 Stephen M. Reynolds 1-29-16 [50]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Dated January 22, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.06 of 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.

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

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $415.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Although the Trustee also raised the issue that feasibility of the plan depends on the granting of a motion to value collateral for RTED America LLC, the court granted that motion on March 2, 2016.

For the first through third reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

59.	16-20194-B-13 JPJ-1	ALIDA/MANUEL DE JESUS LOPEZ Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-18-16 [13]

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

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

The Debtors have not provided evidence of the value of real property as requested by the Chapter 13 Trustee at the meeting of creditors held on February 11, 2016. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

60. 15-20697-B-13 JULIA/LORELEI CARROLL — MOTION FOR RELIEF UPON DEATH OF DEBTOR
ULC-4 Ronald W. Holland — 2-4-16 [52]

Final Ruling: No appearance at the March 16, 2016, hearing is required.

The Notice of Death and Motion for Relief Upon Death or 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 take notice of the death of Debtor Lorelei Jewel Carroll, substitute the surviving Joint Debtor who is appointed representative of the estate, and continue administration of this case.

Joint Debtor Julie Rae Carroll gives notice of death of her husband and Debtor Lorelei Jewel Carroll and requests the court substitute Julie Rae Carroll 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, the Declaration of Julia Rae Carroll states Joint Debtor's desire to complete this case and serve as Debtor's representative for the duration of the case. An amended plan was confirmed on February 23, 2016. 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.

61. 16-20297-B-13 DALE MILLER
JPJ-1 Rick Morin

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-24-16 [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). A written reply has been filed to the objection.

The court's decision is to determine the matter at the scheduled hearing.