UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 23, 2019 at 1:00 p.m.

1.	18-25801-B-13 JPJ-1	ROBERT/TRINITY KIRK Bruce Charles Dwiggins	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 3-25-19 [44]

CASE DISMISSED: 4/11/19

Final Ruling

The case was dismissed on April 11, 2019. Therefore, the motion to convert case to a Chapter 7 proceeding or in the alternative dismiss case is dismissed as moot.

The court will enter a minute order.

2.	19-20901-B-13 JPJ-1	JUAN RAMIREZ AND SALLY MALDONADO Thomas O. Gillis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-27-19 [16]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) (when opposing party has not yet served an answer) or 41(a)(2) (dismissal at the plaintiff's request only by court order, on terms that the court considers proper) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed February 15, 2019, will be confirmed.

The objection and motion are ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

3. 19-20905-B-13 RAMON PARRA
JPJ-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [14]

Tentative Ruling

The objection and motion were 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). 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 the objection and conditionally deny the motion to dismiss.

The Debtor filed a non-opposition to the Trustee's objection and states that he will file an amended plan.

The plan filed February 15, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

4. 19-21508-B-13 JESSICA THOENE — CONTINUED MOTION TO EXTEND AUTOMATIC STAY
RWF-1 Robert W. Fong — 3-15-19 [8]

Final Ruling

This matter was continued from April 9, 2019, so that all parties in interest would have notice. The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on December 12, 2018, due to failure to make plan payments (case no. 15-24484, dkt. 92). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor asserts that the prior case was filed to reorganize and address her debts. Specifically, Debtor's primary residence and a rental property were in arrears. During the prior bankruptcy, Debtor encountered unanticipated medical problems, suffered two slipped discs, needed spinal surgery, and was unable to work or drive. Because of her surgery and recovery period, Debtor was unable to make plan payments. Since then Debtor's circumstances have changed because she is fully recovered from her surgery, continues to work as a real estate agent, and has begun a new full-time job with the United States Postal Service as a mail carrier. With the new steady hours of work as a mail carrier, Debtor can rely on regular income and still generate income from her real estate business.

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

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5. 19-20809-B-13 AP-1 **Thru #8**
YEVGENIY/VERA MIKHALCHUK
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
3-21-19 [17]

Tentative Ruling

The objection 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). 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.

Feasibility depends on the granting of the motion to value collateral of JPMorgan Chase Bank, N.A. The motion to value collateral of JPMorgan Chase Bank, N.A. is denied at Item #8.

The plan filed February 11, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. 19-20809-B-13 JPJ-1
YEVGENIY/VERA MIKHALCHUK
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-20-19 [14]

Tentative Ruling

The objection and motion were 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). 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 the objection and conditionally deny the motion to dismiss.

Feasibility depends on the granting of motions to value collateral of Santander Consumer USA and JPMorgan Chase Bank, N.A. Although the motion to value collateral of Santander Consumer USA was granted, the motion to value collateral of JPMorgan Chase Bank, N.A. was not.

The plan filed February 11, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. 19-20809-B-13 PGM-1 — YEVGENIY/VERA MIKHALCHUK, Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, 3-26-19 [21]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Santander Consumer USA dba Chrysler Capital at $26,914.00.

Debtors' motion to value the secured claim of Santander Consumer USA dba Chrysler Capital ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2016 Dodge Ram ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $26,914.00 as of the petition filing date. As the owner, Debtors' opinion of value is 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).

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 lien on the Vehicle's title secures a purchase-money loan incurred on July 18, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $44,595.98. 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 $26,914.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. 19-20809-B-13 PGM-2 — YEVGENIY/VERA MIKHALCHUK, Peter G. Macaluso — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A., 3-26-19 [26]

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value.

Debtors' motion to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2016 Toyota Highlander ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $19,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is 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 Claim No. 9 filed by JP Morgan Chase Bank, N.A. is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that Debtors are ambiguous as to the repairs made to the Vehicle and that this affects valuation. Creditor also argues that the Debtor should not be permitted to artificially reduce the value of the Vehicle by failing to repair it through insurance and benefit from avoidance of increased deductible payment and/or premium increase. Although the Creditor opposes the valuation provided by the Debtors, Creditor provides no alternative valuation. Creditor requests that the Debtors' motion be denied or for the court to continue the matter to allow the Creditor time to obtain appraisal of the Vehicle.

Discussion

The court finds the Debtors' Declaration vague. The Declaration states that there are items "broken, damaged, and/or in need of repair" but it also states that work was "fixed by bodyshop," the "driver door was replaced," "repaint the whole side." The Declaration reads as if no additional work is required on the Vehicle. If this is the case, then it is contradictory for the Debtors to argue a reduced value for the Vehicle due to need of repairs. The motion is denied.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9. 18-23710-B-13 DAVID/EMILINDA VERA MOTION TO RECONSIDER
JJC-4 Julius J. Cherry 3-19-19 [108]

Final Ruling

Introduction

Before the court is a Motion for Rehearing and Reconsideration of Debtors' Motion to Confirm First Amended Plan filed by Debtors David Vera and Emilinda Cruz Vera ("Debtors"). Dkt. 108. Debtors move for reconsideration of the Order After Hearing on Motion to Confirm First Amended Plan. Dkt. 103.

The motion for reconsideration repeats, or more accurately incorporates, arguments the court previously heard, considered, and rejected. It also presents circumstances no different from those that existed when the motion to confirm the first amended plan was initially heard. The court has therefore determined that oral argument will not assist in the resolution of the motion for reconsideration and issues this decision as a Final Ruling. *See* Local Bankr. R. 9014-1(h).

The court also notes that the motion for reconsideration is not opposed. However, the absence of an opposition does not necessarily mean a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. *See generally, In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019). The motion for reconsideration fails in both respects. Therefore, for the reasons explained below, the Debtors' motion for reconsideration, and thereby confirmation of the Debtors' first amended plan, will be denied.

Procedural Background

The Debtors filed the petition that commenced this Chapter 13 case and an initial plan over ten months ago, on June 14, 2018. Dkts. 1, 5. A confirmation hearing was set on August 14, 2018, dkt. 13, and continued to October 16, 2018. Dkt. 42. On October 16, 2018, the court sustained an objection by the Debtors' mortgage lender and denied confirmation of the initial plan. Dkts. 60. The order denying confirmation of the initial plan was entered on October 24, 2018. Dkt. 66.

For a period of time thereafter, the Debtors did nothing. They were prompted to act only after the Chapter 13 Trustee ("Trustee"), on December 4, 2018, filed a motion under 11 U.S.C. § 1307(c)(1) to dismiss this case for unreasonable delay by the Debtors prejudicial to creditors. Dkts. 67-70. Two weeks later, on December 17, 2018, the Debtors filed a first amended plan and a motion to confirm it. Dkts. 71-77. The Trustee objected to the Debtors' first amended plan and opposed the motion to confirm it on January 25, 2019. Dkt. 83.

The Debtors' motion to confirm and the Trustee's opposition were initially heard on February 12, 2019, and continued to March 5, 2019, to provide the parties with more time to address the first amended plan's classification of the Debtors' mortgage. Dkt. 85. The court heard and considered argument on the motion and opposition on March 5, 2019, at which time it sustained two of the Trustee's three objections, denied the Debtors' motion to confirm, and denied confirmation of the first amended plan. Dkts. 101, 102.

Civil minutes of the March 5, 2019, hearing that include the court's ruling were entered on March 7, 2019. Dkt. 102. An order sustaining the Trustee's objections, denying the Debtors' motion to confirm, and denying confirmation of the first amended plan was entered on March 12, 2019. Dkt. 103. The Debtors moved for reconsideration of that order one week later, on March 19, 2019. Dkts. 108-112.

Factual Background

The Debtors' motion to confirm the first amended plan and their motion for reconsideration focus on a purported right the Debtors assert they have to make

postpetition payments on their defaulted mortgage directly to their lender and thereby override a claim classification structure established by the local rules, the mandatory form Chapter 13 plan, and a General Order. In so doing, the Debtors ignore, and ask the court to ignore, that they have failed to demonstrate in the first instance that the first amended plan is feasible. Stated another way, Debtors effectively "put the cart before the horse."

It is undisputed that the Debtors' mortgage was in default when the petition that commenced this Chapter 13 case was filed. And as the court explained in the civil minutes of March 7, 2019, under the local rules which require the use of a mandatory form Chapter 13 plan adopted by a General Order the prepetition default required the Debtors to classify their mortgage as a Class 1 claim. Class 1 claims are paid by the Trustee. Class 1 of the mandatory form Chapter 13 plan states as follows:

> Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence. . . .
>
> Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

EDC 3-080, § 3.07 & § 3.07(b).

The Debtors, however, sought to classify their mortgage as a Class 4 claim. Classification of the mortgage as a Class 4 claim would permit the Debtors to make postpetition mortgage payments directly to their lender. Class 4 of the mandatory form Chapter 13 plan states as follows:

> Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

EDC 3-080, § 3.10.

The Debtors based the placement of their mortgage in Class 4 rather than Class 1 on *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *adopted and affirmed*, 550 F.3d 1202 (9th Cir. 2008). The Debtors also argued that bankruptcy courts in other California districts permit debtors to make mortgage payments directly to the lender (rather than requiring payment through the Trustee) even if the mortgage is in default when the petition is filed. The court heard, considered, and rejected those arguments following the March 5, 2019, hearing.

In denying the motion to confirm the first amended plan - and thereby confirmation of the first amended plan - the court concluded that consistent with *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 690-91 (9th Cir. BAP 2010), the Bankruptcy Court for the Eastern District of California has permissibly exercised its discretion through its local rules, *i.e.*, Local Bankr. R. 3015-1(a), a mandatory form Chapter 13 plan, *i.e.*, EDC 3-080, and a General Order, *i.e.*, General Order 18-03, to define when a debtor may invoke his or her non-absolute right under *Lopez* to make postpetition payments directly to a creditor. Alternatively, the court held that even if *Lopez* provided the Debtors with some right to make postpetition payments directly to their mortgage lender the first amended plan nevertheless was not feasible if the Debtors were permitted to do so in this case because of a then pending motion for relief from the automatic stay filed by the Debtors' mortgage lender. *See* Dkts. 94-100. The lender's motion was apparently withdrawn on March 13, 2019. Dkt. 104.

Discussion

The motion for reconsideration states that it is brought under Federal Rule of Civil Procedure ("Civil Rule") 60(b)(6) applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9024. *See* dkt. 108, 1:19, 24. This is incorrect. Filed within fourteen days of the entry of the order denying confirmation of the first amended plan, the motion for reconsideration is governed by Civil Rule 59(e) which is applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012).

There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment or order rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.* Moreover, a Civil Rule 59(e) motion is not a vehicle by which to raise arguments or present evidence for the first time which could have been raised or presented earlier, *see School Dist. No. lJ, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993), or to reargue an issue, *Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001).

The motion for reconsideration is two and one-half pages long, and that includes the caption and signature line. It is not supported by any points and authorities. It makes three general arguments all of which lack any substantive analysis under Civil Rule 59(e) or otherwise. It reasserts, or more accurately incorporates, the Debtors' March 5, 2019, *Lopez* and "other districts in California permit direct payments regardless of a prepetition default" arguments. It also asserts that "[s]ome new facts have come to light which the court should consider[.]" Dkt. 108, 1:23. In any case, the motion for reconsideration fails to establish that relief under any aspect of Rule 59(e) generally, or liberally construed under the second prong in particular, is warranted.

The Debtors' first two arguments simply rehash what the court heard, considered, and ultimately rejected on March 5, 2019. Nevertheless, as the court stated in the civil minutes of March 7, 2019, *Geisbrecht* recognizes that bankruptcy courts have discretion to define the appropriate circumstances under which debtors may exercise their non-absolute *Lopez* rights. Consistent with that discretion, the Eastern District of California Bankruptcy Court has enacted Local Rule 3015-1(a), adopted EDC 3-080, and entered General Order 18-03 which collectively require Class 1 classification (and payment by the Trustee) for long-term debt in default when a petition is filed and permit Class 4 classification (and direct payment by the debtor) for long-term debt not in default when a petition is filed.

That the Eastern District of California Bankruptcy Court has exercised its discretion differently than bankruptcy courts in other California districts does not mean, as the Debtors suggest, that debtors in the Eastern District of California are denied *Lopez* rights. Indeed, as the court also noted in its civil minutes of March 7, 2019, in an appropriate case and under appropriate circumstances a debtor in the Eastern District of California could potentially confirm a plan that provides for direct payments to the creditor on a debt in default when the petition is filed. That "safety valve" exists in Local Bankruptcy Rule 1001-1(f) which states as follows:

> Modification of Requirements. The Court may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

However, as the March 7, 2019, civil minutes also note, and as is re-iterated *infra*, this case is not an appropriate case and the first amended plan does not present

appropriate circumstances.

The purported "new facts" on which the Debtors' third argument relies apparently pertain to the withdrawal of the Debtors' lender's motion for relief from the automatic stay that was pending on March 5, 2019. The court relied on evidence in support of that motion and not just the motion itself for its alternative conclusion that, whatever the extent of the Debtors' *Lopez* rights, the first amended plan was not feasible if the Debtors were permitted to pay their lender directly because evidence submitted with the lender's motion demonstrated that the Debtors failed to make at least three postpetition mortgage payments.

Withdrawal by the Debtors' lender of its motion for relief from the automatic stay does not alter the court's March 5, 2019, conclusion that the first amended plan is not feasible if the Debtors make direct mortgage payments. In other words, the withdrawal of the lender's motion does not suddenly render the first amended plan feasible because it does not alter the fact that the lender filed a declaration under penalty of perjury which states as follows:

> Post-petition delinquency: the Loan is post-petition due for December 1, 2018 payment. The amount of post-petition payments due but remaining unpaid since the filing of this case is as follows:
>
> [12/1/18 - 2/1/19] 3 payments at $2,317.65: $6,952.95
>
> Less Suspense: ($1,217.65)
>
> Total Post-petition delinquency: $5,735.30

Dkt. 96 at ¶ 7.

The point is, whatever the extent of the Debtors' non-absolute *Lopez* rights, the court is not persuaded that, in this case, a plan that provides for direct mortgage payments by the Debtors is feasible and, therefore, a departure from the claim classification structure established by the local rules, mandatory form Chapter 13 plan, and General Order is warranted. In other words, the Debtors have a demonstrated history of an unwillingness or inability to make postpetition mortgage payments to their lender.[1] Therefore, independent of any *Lopez* argument, as was the case on March 5, 2019, and as remains the case on reconsideration, the first amended plan fails under § 1325(a)(6).

Conclusion

For all the foregoing reasons, the motion for reconsideration and confirmation of the

[1]This conclusion is bolstered by the Debtors' bankruptcy history. The Debtors filed a Chapter 13 case on August 2, 2004, in which they proposed a plan that provided for postpetition payments of $370.00 per month directly to a secured creditor in Class 4. *See* case no. 04-27879, dkt. 4. Although the case ultimately failed and was dismissed because the Debtors failed to make plan payments, *id.*, dkt. 26, prior to dismissal the Debtors filed and confirmed a first amended plan which removed the secured creditor's claim from Class 4. *Id.*, dkts. 9, 16. The amendment is telling in that it reflects the Debtors own recognition that they were unable or unwilling to make direct postpetition payments that were 25% of the $1,704.51 mortgage payment now proposed in the first amended plan filed in this case. The Debtors filed a subsequent Chapter 13 case that was also dismissed because they failed or were unable to make plan payments. *See* case no. 05-20123, dkt. 34. It was only when the Debtors confirmed a plan that placed their mortgage in Class 1 (and thus paid by the Trustee) that they were able to successfully complete a plan and obtain a discharge. *See* case no. 05-30259.

first amended plan will be denied.[2]

The court will enter an appropriate minute order.

[2]The court makes no determination but notes that a Chapter 13 case pending for over ten months without a confirmed plan may, at a minimum, be unreasonable delay by the Debtors that is prejudicial to creditors and, thus, cause for dismissal under 11 U.S.C. § 1307(c)(1).

10. 16-28212-B-13 JACKSON/ALYSHA FONSECA — MOTION TO EMPLOY HIGH PRIORITY REALTY AS BROKER(S)
RJM-2 Rick Morin — 4-3-19 [36]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 deny the motion to employ Tramar T. Rawls as real estate broker.

Debtors seek to employ Tramar T. Rawls, president and broker of High Priority Realty. The Debtors state that Mr. Rawls' appointment and retention is necessary to list and sell their real property commonly known as 790 Holsteiner Court, Galt, California.

Mr. Rawls testifies that he is representing the Debtors in the sale of their home located in Galt. Mr. Rawls testifies he does not represent or hold any interest adverse to the Debtors or to the estate and that he has no connection with the Debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mr. Rawls will receive a 1.5% commission for this sale out of a total commission of 4%. The other 2.5% is being offered to the buyer's agent.

Discussion

Debtors' motion references Bankruptcy Rule 2014. No statutory basis for the proposed employment is stated.

Bankruptcy Rule 2014(a) authorizes the employment of "professionals pursuant to § 327, § 1103, or § 1114 of the Code." Presumably, Debtors invoke § 327 since § 1103 and § 1114 are inapplicable in this Chapter 13 case.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Some courts hold that § 327 applies to the employment of professionals by Chapter 13 trustees and Chapter 13 debtors. *See e.g., Wright v. Csabi (In re Wright)*, 578 B.R. 570 (Bankr. S.D. Tex. 2017) (§ 327(e)); *In re Goines*, 465 B.R. 704 (Bankr. N.D. Ga. 2012) (§ 327(e)); *In re Jenkins*, 406 B.R. 817 (Bankr. N.D. Ind. 2009) ("the term 'trustee' in 11 U.S.C. § 327(e) is to be read as 'Chapter 13 debtor'"). However, a majority of courts hold that § 327 applies only when Chapter 13 trustees seek to employ professionals and it is inapplicable to the employment of professionals by Chapter 13 debtors. *See e.g., In re Gilliam*, 582 B.R. 459, 465-66 (Bankr. N.D. Ill. 2018) (§ 327 does not apply to Chapter 13 debtors); *In re Scott*, 531 B.R. 640, 644-45 (Bankr. N.D. Miss. 2015) (nothing suggests that "trustee" in § 327(e) means debtor); *In re Jones*, 505 B.R. 229, 231 (Bankr. E.D. Wis. 2014) ("[A]n individual chapter 13 debtor ... is not a 'trustee' for purposes of § 327."); *In re Maldonado*, 483 B.R. 326, 330 (Bankr. N.D. Ill. 2012) (§ 327 does not apply to debtors in Chapter 13 cases); *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005) ("Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals.").

The majority consider the limitation of § 327 to a "trustee" and the omission of reference to Chapter 13 debtors significant. As the court in *Tirado* explained in the context of the debtor's request to employ a professional to assist the debtor in the sale of real property:

[Section] 327 does not apply to the employment of attorneys or other professi
chapter 13 debtor. Section 327 applies to trustees, and, pursuant to § 1107 of the Bankruptcy Code, when § 327 refers to the trustee, the reference includes the debtor in possession. [Internal citation omitted].

> Each subsection of § 327 either focuses on the trustee or excludes chapter 13. *See* 11 U.S.C. §§ 327(a) ("the trustee ... may employ ..."); 327(b) ("the trustee may retain or replace ..."); 327(c) ("In a case under chapter 7, 12, or 11 of this title ..."); 327(d) ("the court may authorize the trustee to act as attorney or accountant"); 327(e) ("The trustee ... may employ ..."); and 327(f) ("The trustee may not employ ..."). Congress, through the use of plain and unambiguous language, has limited the scope of § 327 to trustees. Although chapter 11 debtors in possession have also been included under § 327 via § 1107, and chapter 12 debtors must comply with § 327 pursuant to § 1203, there is no corresponding section of chapter 13 making § 327 applicable to chapter 13 debtors.
>
> Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals. The requirements of § 327 would be triggered by a chapter 13 trustee's application to employ a professional, but in this case, [the professional's] services were rendered to the Debtor, not the Trustee. For, unlike chapter 11 and 12 in which the debtor in possession has the same rights and duties when selling property and employing professionals as a trustee, "the [chapter 13] debtor shall have, *exclusive of the trustee*, the rights and powers of a trustee [to use, sell, or lease property]." 11 U.S.C. § 1303 (emphasis supplied).

Tirado, 329 B.R. at 250.

This court has previously followed the majority and found § 327 inapplicable to a debtor's request to employ a professional to assist the debtor in the sale of his residence. *See e.g., In re Slagle*, Case No. 18-27555 (Bankr. E.D. Cal. 2018), Dkts. 22 & 52. In so doing, the court applied *Tirado's* reasoning.

There does not appear to be any controlling case law on this matter in the Ninth Circuit. Nevertheless, the court has considered the pros and cons of each approach to arrive at a result that is consistent with the plain language of § 327 in particular and the intent of the Bankruptcy Code generally. And so in that regard, the court finds *Tirado's* reasoning and the majority position to be the better and better reasoned approach. Accordingly, the court concludes that it is not necessary for the Debtors' real estate professional's employment to be approved under § 327 in order to permit the real estate professional to assist the Debtors in the sale of the Property. The Debtors' motion is therefore denied.

The court will enter an appropriate minute order.

11. 19-21619-B-13 LINDA ALANIS
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF TOYOTA FINANCIAL SERVICES
3-31-19 [13]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 value the secured claim of Toyota Financial Services at $17,200.00.

Debtor's motion to value the secured claim of Toyota Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Toyota Rav4 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $17,200.00 as of the petition filing date. As the owner, Debtor's opinion of value is 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 Claim No. 3 filed by Toyota Motor Credit Corporation 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 August 31, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $28,514.68 as provided in Claim No. 3. 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 $17,200.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. 19-20621-B-13 JPJ-1 — MERCEDES MOYA-GRANT — Richard L. Jare — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-20-19 [31]

Tentative Ruling

The objection and motion were 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). 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 matter will be determined at the scheduled hearing.

This matter was continued from April 9, 2019, to provide Debtor additional time to submit proof of her social security number to the Trustee pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). Additionally, Debtor has one plan payment due, which Debtor's counsel stated at the hearing would be resolved by April 23, 2019.

Provided the two matters referenced above are resolved at the time of the hearing, in the absence of any other objection, these objections will be overruled, the motion to dismiss denied, and the plan confirmed.

The court will enter a minute order.

13. 19-20622-B-13 JPJ-1 **Thru #14**
MARCO CASTILLO
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-20-19 [17]

Tentative Ruling

The objection and motion were 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). 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 overrule the objection, deny the motion to dismiss, and confirm the plan.

First, feasibility depends on the granting of a motion to value collateral of Heritage Community Credit Union. That motion was granted at Item #14.

Second, the Debtor filed an amended Form 122C-1 on March 28, 2019, to include his income. The Debtor has carried his burden that the plan complies with 11 U.S.C. § 1325(a)(1).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed February 1, 2019, is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

14. 19-20622-B-13 PGM-1
MARCO CASTILLO
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF HERITAGE COMMUNITY CREDIT UNION
3-23-19 [20]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Heritage Community Credit Union at $11,570.00.

Debtor's motion to value the secured claim of Heritage Community Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010

Chrysler 300 SRT ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,570.00 as of the petition filing date. As the owner, Debtor's opinion of value is 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 Claim No. 3 filed by Heritage Community 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 February 24, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,234.71. 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 $11,570.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15.	18-27923-B-13 TOG-2	ALVARO FIERRO AND ANEL LUNA Thomas O. Gillis	MOTION TO CONFIRM PLAN 3-12-19 [37]

No Ruling

16. 17-26025-B-13 PATRICIA SHIELDS
MEV-4 Marc Voisenat

MOTION TO MODIFY PLAN
3-1-19 [67]

No Ruling

17. 15-28729-B-13 CHARLES EVANS
MET-2 Mary Ellen Terranella

CONTINUED MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS ATTORNEY(S)
3-23-19 [65]

Final Ruling

This matter was continued from April 9, 2019, to provide at least 21 days' notice per Bankruptcy Rule 2002(a)(6) since the motion seeks compensation that exceeds $1,000.00. The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Mary Ellen Terranella ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $5,000.00, paid to W. Scott de Bie. Dkt. 26. An order granting substitution of Applicant was entered on August 1, 2018. Applicant had contracted with Debtor at a rate of $350.00 per hour. Applicant seeks compensation in the amount of $1,200.00 in fees and $70.84 in costs. This is a reduction from total fees and costs of $3,150.84.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 65.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require a motion to approve marital settlement agreement. Applicant spent 8.80 hours in post-confirmation services that were actual, reasonable, unanticipated, and necessary. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$1,200.00
Additional Costs and Expenses	$ 70.84

The motion is ORDERED GRANTED for additional fees of $1,200.00 and costs and expenses of $70.84.

The court will enter a minute order.

18. 17-28230-B-13 ROYAN WITHERS
Thru #19 Mark A. Wolff

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
2-28-19 [55]

No Ruling

19. 17-28230-B-13 ROYAN WITHERS
WW-2 Mark A. Wolff

MOTION TO MODIFY PLAN
3-6-19 [60]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

20. 18-27731-B-13 JHW-1 — MEHRDAD/ZAHRA DEZYANIAN, Mohammad M. Mokarram — MOTION FOR RELIEF FROM AUTOMATIC STAY, 3-14-19 [26]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Santander Consumer USA, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Dodge Ram 1500 (the "Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Young Declaration provides testimony that Debtors have not made monthly payments from May 30, 2017, through January 30, 2019. The Declaration also states that the Debtors surrendered the Vehicle on October 3, 2018. The Vehicle is a lease.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case. Moreover, the Vehicle was surrendered by the Debtors to the creditor on August 3, 2018.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

21. 19-22035-B-13 RAUL/MARTHA SOTO — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 4-2-19 [10]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 extend automatic stay.

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on March 22, 2019, due to Debtors' failure to confirm an amended plan within 60 days of the entry of the order denying confirmation of the Debtors' plan (case no. 18-27141, dkt. 53). 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.

Discussion

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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 the previous case was filed in an effort to protect Debtors' business and income. Debtors state that the instant case was filed in order to save their vehicles from repossession. Both Debtor and Joint Debtor are employed with regular monthly income. Debtors contend that their previous case was dismissed because they had lost contact with their attorney's office and were not able to timely file a new plan. Debtors state that their circumstances have changed because they now understand the need to watch their mail and get a hold of their attorney directly to ensure they do not miss any deadlines.

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

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. 17-23439-B-13 MET-2 — WENDY ROBINETTE, Mary Ellen Terranella — CONTINUED MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTOR'S ATTORNEY 3-24-19 [49]

Final Ruling

This matter was continued from April 9, 2019, to provide at least 21 days' notice per Bankruptcy Rule 2002(a)(6) since the motion seeks compensation that exceeds $1,000.00. The motion 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)(B) 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. The matter will be resolved without oral argument.

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

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Mary Ellen Terranella ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, paid to W. Scott de Bie. Dkt. 17. An order granting substitution of Applicant was entered on July 25, 2018. Applicant had contracted with Debtor at a rate of $350.00 per hour. Applicant seeks compensation in the amount of $3,010.00 in fees and $59.15 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 49.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor and her husband would separate, eliminating a significant source of net disposable income. Applicant spent 8.60 hours in post-confirmation services that were actual, reasonable, unanticipated, and necessary. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$3,010.00
Additional Costs and Expenses	$ 59.15

The motion is ORDERED GRANTED for additional fees of $3,010.00 and costs and expenses of $59.15.

The court will enter a minute order.

23. 19-21640-B-13 **Thru #24**
DEBORA MILLER-ZURANICH
Pro Se
MOTION TO EXTEND DEADLINE TO FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION
4-1-19 [9]

No Ruling

24. 19-21640-B-13
DEBORA MILLER-ZURANICH
Pro Se
MOTION TO IMPOSE AUTOMATIC STAY
4-1-19 [11]

No Ruling

25. 19-21740-B-13 JUDITH HARTWELL
ADR-1 Justin K. Kuney

MOTION TO VALUE COLLATERAL OF GOLDEN STATE FINANCE AUTHORITY
4-9-19 [13]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 value the secured claim of Golden State Finance Authority at $0.00.

Debtor's motion to value the secured claim of Golden State Finance Authority ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4821 Grannan Way, Placerville, California ("Property"). Debtor seeks to value the Property at a fair market value of $575,000.00 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 that 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 $585,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $23,000.00. Therefore, Creditor's claim secured by a junior deed of trust is

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26. 15-21046-B-13 DONALD/KANDY WHITE MOTION TO BORROW
SLE-1 Steele Lanphier 4-9-19 [21]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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 matter will be determined at the scheduled hearing.

The motion seeks permission to purchase a real property located at 343 Chisum Avenue, Rio Linda, California. The purchase price for the property is approximately $319,000.00, Debtors will deposit $2,000.00, the total loan amount will be $333,782.00, and monthly mortgage payments shall be $2,219.00. Debtors have been renters the entire duration of their bankruptcy and seek to purchase a home in order to have greater stability. Debtors are current on plan payments and have only 10 more monthly payments remaining. Debtors acknowledge that their monthly housing expense will increase and a new modified plan will likely provide a lower return to unsecured creditors than the plan confirmed April 21, 2015. However, Debtors anticipate that their modified plan payments will deduct about $300.00 per month, if that, to unsecured creditors. Debtors contend that given the relatively small sum that would be taken away from unsecured creditors, the unsecured creditors will suffer relatively little, or no, harm from the granting of this motion.

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 matter will be determined at the scheduled hearing.

27. 17-27747-B-13 LP-1 — RONALD WITSCHI, JR. — Lewis Phon — MOTION TO MODIFY PLAN 2-28-19 [40]

No Ruling

28. 17-24048-B-13 RANDY/PATRICIA PELFREY MOTION TO SELL
SJT-3 Susan J. Turner 3-20-19 [42]

Tentative Ruling

The motion 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 1460 Austin Drive, Dixon, California ("Property").

Proposed purchasers Timothy and Christy Farris have agreed to purchase the Property for $525,000.00. The Property is subject to the mortgage owed to JP Morgan Chase in the amount of approximately $420,000.00 and the sale of the Property is subject to the creditor's consent. Debtor asks that approximately $63,980.00 of the sale proceeds be directed to the Chapter 13 Trustee and than funds in excess of this amount be disbursed directly to the Debtor.

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

29.	17-27350-B-13 RRR-1	RICCY/TESSIE LABITORIA Ronald R. Roundy	MOTION TO MODIFY PLAN 2-28-19 [88]

No Ruling

30. 18-24150-B-13 JPJ-3 | STEVEN ADAMS
Peter G. Macaluso | OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-11-19 [106]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

The Trustee objects to the Debtor's claim of California Code of Civil Procedure § 703.140(b)(11)(D) to claim as exempt a lawsuit against Round Point Mortgage in the amount of $24,778.00. This claim of exemption is limited to payment on account of personal bodily injury. The lawsuit is described in question number 9 of the Statement of Financial Affairs as "homeowners bill of rights." There does not appear to be any personal bodily injury as a result of any alleged actions by Round Point Mortgage. The court had previously sustained this objection raised by the Trustee. *See* dkt. 54. The exemption was, and continues to be, disallowed.

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

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

31.	18-26852-B-13 PLC-2	JIMMY SANTOS AND JULIE MAGHONEY SANTOS Peter L. Cianchetta	MOTION TO CONFIRM PLAN 3-8-19 [62]

No Ruling

32. 19-20653-B-13 JPJ-1 GINA SLAUGHTER
Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-22-19 [16]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

First, the Debtor has claimed a vehicle as exempt under California Code of Civil Procedure § 704.010 in the amount of $5,594.00. This exceeds the maximum amount allowed of $3,050.00. The Debtor cannot claim the exemption in the amount of $2,594.00 for the vehicle.

Second, the Debtor has claimed her real property as exempt under California Code of Civil Procedure § 704.710 in the amount of $113,000.00. This exceeds the maximum amount allowed of $100,000.00. The Debtor cannot claim the exemption in the amount of $13,000.00 for the real property.

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

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

33.	18-24656-B-13 LBG-102	BACHAR ALBOKAI Lucas B. Garcia	MOTION TO CONFIRM PLAN 3-11-19 [66]

No Ruling

34. 19-20857-B-13 JOHN STANTON
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [21]

Tentative Ruling

The objection and motion were 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). 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 April 3, 2019. The confirmation hearing for the amended plan is scheduled for May 21, 2019. The earlier plan filed February 26, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

35. 15-24459-B-13 SDH-7 | THOMAS/HEATHER PINTO
Scott D. Hughes | OBJECTION TO CLAIM OF LYNN O'NEILL, CLAIM NUMBER 9
2-26-19 [110]

Final Ruling

The objection 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. 9 of Lynn O'Neill and disallow the claim in its entirety.

Thomas and Heather Pinto ("Debtors") request that the court disallow the claim of Lynn O'Neill ("Creditor"), Claim No. 9. The claim is asserted to be in the amount of $12,500.00. Debtors assert that no money is owed to the Lynn O'Neill residing in Florida who had called Debtors' counsel on December 10, 2019, and informed him that the Debtors do not owe him anything. Claim No. 9 was filed by the Debtors on behalf of a Lynn O'Neill but that particular creditor cannot be found. The Trustee's checks were sent to the Lynn O'Neill in Florida for several months.

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

Debtors have satisfied their burden of overcoming the presumptive validity of the claim. Debtors have tried to locate the Creditor but his whereabouts are unknown. The Lynn O'Neill that received checks from the Trustee is not a creditor to the Debtors.

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

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

36. 16-20763-B-13 LAWRENCE/CHYANNE MICALLEF
EAT-1 Mark A. Wolff
Thru #37
HSBC BANK USA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-19 [91]

No Ruling

37. 16-20763-B-13 LAWRENCE/CHYANNE MICALLEF
WW-5 Mark A. Wolff

MOTION TO MODIFY PLAN
3-5-19 [86]

No Ruling

38. 19-21063-B-13 ANGELA BOOTH
JPJ-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [13]

Tentative Ruling

The objection and motion were 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). 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 matter will be determined at the scheduled hearing.

The Trustee objects to confirmation of the plan on grounds that the Debtor failed to submit proof of social security number as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B), and the Debtor failed to file an amended Statement of Financial Affairs to list wage garnishments and levies for 2018 and 2019. An amended Statement of Financial Affairs was filed on April 18, 2019.

Provided that the Debtor has also submitted proof of social security number, the plan filed February 22, 2019, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a).

The court will enter a minute order.

39. 18-27365-B-13 YVONNE JOHNSON
MJ-1 Stacie L. Power

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
3-18-19 [35]

CASE DISMISSED: 4/11/19

Final Ruling

The case was dismissed on April 11, 2019. Therefore, the objection is dismissed as moot.

The court will enter a minute order.

40. 19-20068-B-13 MELANIE PAULY MONTERROSA
JPJ-1 Mary Ellen Terranella
Thru #41

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [20]

No Ruling

41. 19-20068-B-13 MELANIE PAULY MONTERROSA
MET-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF FRANCHISE TAX BOARD, CLAIM NUMBER 3
2-25-19 [29]

No Ruling

42. 19-20768-B-13 RONN/MELINDA BADILLA
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [22]

Tentative Ruling

The objection and motion were 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). 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 do not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Debtors include toward the expense on Line #17 of Form 122C-2 an amount of $223.84, for the repayment of a retirement loan, that will not last longer than 3 years. This amount may be pro-rated over the plan term of 5 years, which recalculates to $134.30 per month. Therefore, the Debtors overstate their retirement loan expense by $89.54 per month. When this overstated expense is added to Line #45, the Debtors' monthly disposable income increases from $203.08 to $292.62. Therefore, the Debtors must pay no less than $17,557.20 to their unsecured, non-priority creditors. The Debtors propose to pay 16% or $12,330.88 to their nonpriority unsecured claims.

Third, the plan payment in the amount of $650.00 does not equal the aggregate of the Trustee's fees and Class 2 secured claims. The aggregate of the monthly amounts plus Trustee's fee is $689.13. The plan does not comply with Section 5.2 of the mandatory form plan.

Fourth, the Debtors have not amended the Statement of Financial Affairs to add Melinda Badilla's 2019 wage garnishment as requested by the Trustee. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed February 18, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

43. 18-21272-B-13 STEPHEN/LESLY SAWYER
NSV-2 Nima S. Vokshori

MOTION TO MODIFY PLAN
3-8-19 [87]

No Ruling

44. 19-20872-B-13 CASEY GRAY
JPJ-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [22]

Tentative Ruling

The objection and motion were 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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

Feasibility depends on the granting of a motion to value collateral for Santander Consumer USA. That motion was heard and granted on April 9, 2019.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed February 14, 2019, is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

45. 18-24576-B-13 ALAIN KOZIK AND JON BECK — MOTION TO MODIFY PLAN
PSB-2 Pauldeep Bain — 3-11-19 [41]

Final Ruling

Continued to May 7, 2019, at 1:00 p.m. to be heard in conjunction with motion to sell.

The court will enter a minute order.

46. 19-20476-B-13 JPJ-1 — JEFFERY/ANNA SISK, Dale A. Orthner — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 2-28-19 [31]

Final Ruling

This matter was continued from April 2, 2019. Debtor's response was due April 9, 2019, and no response was filed. Trustee's reply was due April 16, 2019, and the Trustee filed a reply stating that its issues are still outstanding and that it is unable to recommend confirmation at this time.

The objection and motion were 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). 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 does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors' amended Calculation of Disposable Income (Forms 122C-1 and 122C-2) shows that the Debtors' monthly disposable income is $293.59 and the Debtors must pay no less than $17,615.40 to unsecured non-priority creditors. The Debtors' plan proposes to pay 0% dividend to nonpriority unsecured creditors.

Feasibility of the plan also depends on the granting of motions to value collateral for BH Financial, Golden 1, and Serrano HOA. Those motions to value were heard and granted on March 5, 2019.

Due to the issue with Debtors' projected disposable income, the plan filed January 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

47. 19-20977-B-13 CJO-1 — LISA BRAXTON, Mark Shmorgon — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 3-28-19 [25]

Tentative Ruling

The objection 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). 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 overrule the objection and confirm the plan.

Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor asserts $2,057.35 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed February 19, 2019, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

48. 18-23478-B-13 TJS-1 — TAMMY JACKSON, Peter G. Macaluso — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION, 4-5-19 [48]

XCL TITLING TRUST, LLC VS.

No Ruling

49.	17-26881-B-13 GEL-1	RAQUEL SMALLS Gabriel E. Liberman	MOTION TO MODIFY PLAN 3-18-19 [30]

No Ruling

50. 19-20882-B-13 HENRY RODRIGUEZ
JPJ-1 Peter G. Macaluso
Thru #51

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-20-19 [24]

Tentative Ruling

The objection and motion were 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). 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.

Feasibility depends on the granting of a motion to value collateral for Schools Financial Credit Union. Although the motion to value was scheduled to be heard today, April 23, 2019, the Debtor and creditor Schools Financial Credit Union stipulated the value of the 2015 Dodge Charger to be $14,478.00. Dkt. 34. This is $1,478.00 more than the value provided for in Class 2 of the plan filed February 14, 2019, and a dividend difference of $32.00 per month.

The plan filed February 14, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will reconsider this Tentative Ruling, overrule the objection, deny the motion to dismiss, and confirm the plan if no party objects to the inclusion of the stipulated value and the increased dividend resulting from the stipulated value in the order confirming.

The court will enter a minute order.

51. 19-20882-B-13 HENRY RODRIGUEZ
RTD-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL CREDIT UNION
3-21-19 [28]

Tentative Ruling

The objection and motion were 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). 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.

Feasibility depends on the granting of a motion to value collateral for Schools Financial Credit Union. Although the motion to value was scheduled to be heard today, April 23, 2019, the Debtor and creditor Schools Financial Credit Union stipulated the value of the 2015 Dodge Charger to be $14,478.00. Dkt. 34. This is $1,478.00 more than the value provided for in Class 2 of the plan filed February 14, 2019, and a dividend difference of $32.00 per month.

The plan filed February 14, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will reconsider this Tentative Ruling, overrule the objection, and confirm the plan if no party objects to the inclusion of the stipulated value and the increased dividend resulting from the stipulated value in the order confirming.

The court will enter a minute order.

52. 19-20683-B-13 JPJ-1 **Thru #53**
SHARON BOLLING
Peter G. Macaluso
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
3-20-19 [23]

Tentative Ruling

The objection 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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for March 14, 2019, or the continued meeting set for March 21, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided the Trustee with a copy of the federal 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, feasibility depends on the granting of the motion to value collateral for Real Time Resolutions. That motion is granted at Item #53.

For the first and second reasons stated above, the plan filed February 19, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

53. 19-20683-B-13 PGM-1
SHARON BOLLING
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS
3-26-19 [26]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Real Time Resolutions at $0.00.

Debtor's motion to value the secured claim of Real Time Resolutions ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8439 Ascolano Avenue, Fair Oaks, California ("Property"). Debtor seeks to value the Property at a fair market value of $560,000.00 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 that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $589,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $125,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

54. 17-26184-B-13 DEREK/AMIE REDMAN
SMR-1 Matthew J. DeCaminada

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-19 [39]

H.O. APARTMENTS, LLC VS.

No Ruling

55. 18-25184-B-13 MICHELE DAVENPORT MOTION TO MODIFY PLAN
BLG-1 Chad M. Johnson 3-11-19 [22]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

56. 19-20185-B-13 AAS-1 **Thru #58**
PATRICK/PAULA FIELDS
Bruce Charles Dwiggins
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF EASTERN OREGON
3-21-19 [32]

Tentative Ruling

The objection 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). 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.

Objecting creditor Bank of Eastern Oregon ("Creditor") holds the following two security interests:

The first is a secured claim evidenced by a variable interest rate promissory note in the original principal amount of $130,000.00 and cross-collateralized by farm equipment and farmland commonly known as NKA Farmland, Davis Creek, California, and further described by APN: 025-230-23, 025-230-34, 025-230-39, and 025-330-43. The farmland in interest is separate and apart from the real property that is Debtors' principal residence. Creditor's claim is evidenced by Claim No. 6.

The second is a secured claim evidenced by a fixed interest promissory note in the original principal amount of $45,000.00 and cross-collateralized by farm equipment and farmland commonly known as NKA Farmland, Davis Creek, California, and further described by APN: 025-230-23, 025-230-34, 025-230-39, and 025-330-43. The farmland in interest is separate and apart from the real property that is Debtors' principal residence. Creditor's claim is evidenced by Claim No. 7.

The Debtors have not objected to Claim Nos. 6 or 7 and the plan does not provide for Creditor's cross-collateralization of the farm equipment and farmland. 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).

The plan filed January 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

57. 19-20185-B-13 DB-1
PATRICK/PAULA FIELDS
Bruce Charles Dwiggins
CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY WASHINGTON FEDERAL
3-21-19 [29]

Tentative Ruling

The objection 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). 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.

Objecting creditor Washington Federal ("Creditor") is the successor by merger to two loans made to Debtors by South Valley Bank and Trust. Debtors scheduled the loans as consumer loans but they are actually commercial loans made to fund Debtors farming operations. The loans are secured by real property and personal property. The Debtors' primary residence is not part of the Creditor's collateral.

The first loan is supported by Claim No. 12, which asserts $129,607.22 in pre-petition arrears as to real property commonly known as 397 acres of farm land located at Tax Lots 025-230-23, 34, 39, and 43, and equipment, livestock, A/R, inventory, and general intangibles. This loan matures April 17, 2042.

The second loan is supported by Claim No. 13, which asserts $9,237.67 in pre-petition arrears as to real property commonly known as Tax Lot 025-230-40, and assignment of life insurance, equipment, livestock, A/R, inventory, and general intangibles. This loan matured April 15, 2019.

As to the first loan, the plan does not propose to cure the full amount of arrearages, interest, or maintenance of annual note installments. As to the second loan, the plan does not provide a reasonable cure period given that the loan matured April 15, 2019. *See* 11 U.S.C. §§ 1322(b)(3), (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 January 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

58.	19-20185-B-13 JPJ-1	PATRICK/PAULA FIELDS Bruce Charles Dwiggins	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 3-19-19 [21]

Tentative Ruling

The objection 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). 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, Joint Debtor did not appear at the first meeting of creditors set for March 14, 2019, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to April 11, 2019, and Joint Debtor appeared.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $13,753.40, which represents approximately 1 plan payment. An additional payment of $13,753.40 will by due by the date of the hearing on this matter. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information as to the loans of three real properties. The Debtor have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, the plan does not appear to have been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) since the Debtor's income at Question 4 of the

Statement of Financial Affairs is listed at $0.00 in the year 2017.

Fifth, feasibility depends on the granting of a motion to value collateral for Bank of Eastern Oregon. To date, the Debtors have not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value collateral.

The plan filed January 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

59. 18-27989-B-13 JESSE NIESEN
KSR-3 Mark Shmorgon
MOTION TO DISMISS CASE
3-26-19 [76]
Thru #60

No Ruling

60. 18-27989-B-13 JESSE NIESEN
MS-1 Mark Shmorgon
MOTION TO CONFIRM PLAN
2-5-19 [45]

No Ruling

61. 19-20293-B-13 ROLINA BROWN
KPM-3 Mark Shmorgon
Thru #62
POLYCOMP TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-19 [24]

No Ruling

62. 19-20293-B-13 ROLINA BROWN
PGM-1 Mark Shmorgon

MOTION TO CONFIRM PLAN
3-15-19 [28]

No Ruling

63. 18-26995-B-13 URBAN/WENDY KIRK MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 3-12-19 [39]

Final Ruling

The motion has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

64. 19-20995-B-13 JPJ-1 **Thru #66**
RUDY GONZALEZ, AND ROBERTA GONZALEZ
Susan B. Terrado
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-27-19 [28]

Tentative Ruling

The objection and motion were 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). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 5, 2019. The confirmation hearing for the amended plan is scheduled for June 4, 2019. The earlier plan filed February 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

65. 19-20995-B-13 SBT-1
RUDY GONZALEZ, AND ROBERTA GONZALEZ
Susan B. Terrado
MOTION TO VALUE COLLATERAL OF JACK AND SHIRLEY CHONG
3-1-19 [12]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to deny the motion as moot.

A stipulation resolving the motion to value collateral of Jack and Shirley Chong was entered into between Debtors and creditors Jack and Shirley Chong and approved by the court on April 4, 2019.

The motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

66. 19-20995-B-13 SBT-2 — RUDY GONZALEZ, AND ROBERTA GONZALEZ — Susan B. Terrado — MOTION TO VALUE COLLATERAL OF GM FINANCIAL — 3-25-19 [25]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to deny the motion to value collateral.

Debtors move to value the secured claim of GM Financial ("Creditor"). Debtor is the owner of a 2008 Toyota Camry ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. However, no declaration or evidence is provided to support this assertion. In short, there is no evidence from which the court may conclude that the replacement value of the Vehicle is $5,000.00

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.