

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 31, 2018 at 1:00 p.m.

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1. [18-22900](#)-B-13 BARBARA REYNOLDS CONTINUED OBJECTION TO
[JPJ](#)-1 Jeffrey S. Ogilvie CONFIRMATION OF PLAN BY JAN P.
Thru #2 DISMISS CASE
6-19-18 [[20](#)]

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

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

Feasibility depends on the granting of a motion to value collateral of Bank of America, N.A. That motion is granted at Item #2, JSO-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 May 9, 2018, is confirmed.

The court will enter an appropriate minute order.

2. [18-22900](#)-B-13 BARBARA REYNOLDS MOTION TO VALUE COLLATERAL OF
[JSO](#)-1 Jeffrey S. Ogilvie BANK OF AMERICA, N.A.
6-19-18 [[23](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Value Collateral of Bank of America, N.A., 11 U.S.C. § 506 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

July 31, 2018 at 1:00 p.m.

Debtor's motion to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 12175 Neal Lane, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of \$175,000.00 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. 1-1 filed by Bank of America, N.A. 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 \$186,241.00. Creditor's junior lien secures a claim with a balance of approximately \$31,936.70. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

3. [18-23200](#)-B-13 JOSEFINA AGUILAR
[JPJ](#)-1 Mikalah R. Liviaksi

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[16](#)]

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

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

The plan filed May 21, 2018, does not comply with 11 U.S.C. § 1322(b)(2). The plan proposes an impermissible modification of the secured claim of Shellpoint Mortgage, the holder of the first deed of trust on the Debtor's principal residence. The Debtor has presented no evidence that the lender has consented to or is considering a loan modification. Moreover, because this court views the additional provisions included in § 7.01 et seq. of the Debtor's plan as inconsistent with § 1322(b)(2) when there is no evidence that the lender has actually consented to a loan modification, this court consistently denies confirmation of plans that include such provisions.

The plan filed May 21, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

4. [18-22701](#)-B-13 MARCOS FLAVIO LOYOLA OBJECTION TO DEBTORS' CLAIM OF
[JPJ](#)-2 RAMIREZ AND RECHEL EXEMPTIONS
 Rupert Corkill 7-3-18 [[23](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Trustee's Objection to Debtor's [sic] Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to overrule the objection as moot due to the filing of amended Schedule C.

The Trustee objects to the Debtors' use of various California exemptions.

First, Debtors' schedules filed on April 30, 2018, claims three vehicles as exempt under California Code of Civil Procedure § 704.010 in the amount of \$4,120.00, which exceeds the maximum allowed of \$3,050.00.

Second, Debtors have chosen to exempt the equity in their 1987 Chevrolet Camaro Z28 under California Code of Civil Procedure § 704.060, but a motor vehicle cannot be exempt under the California tools of trade code if there is a motor vehicle that is exempt under California Code of Civil Procedure § 704.010 and that is reasonably adequate for use in the business for which the exemption is claimed.

Third, Debtors have claimed their interest in a 2005 Dodge 1500 Quad Cab, sports and hobby equipment, construction tools, irrigation materials, dog house, personal items, and 2017 tax refund as exempt under California Code of Civil Procedure § 704.730(a)(2). However, this exemption is limited to equity amount in principal place of residence, house, land and mobile home. The items described do not meet the definition of principal place of residence under the California homestead code.

A review of the docket shows that the Debtors filed an amended Schedule C on July 18, 2018. The Debtors have changed their exemptions to resolve the Trustee's issues. However, the court notes that certain items listed as exempt on the April 30, 2018, Schedule C no longer are listed on the amended Schedule C. The court presumes that the Debtors no longer claim those items as exempt.

The Trustee's objection is overruled due to the filing of amended Schedule C.

The court will enter an appropriate minute order.

5. [16-20707](#)-B-13 EDWIN GATO
[JPJ](#)-2 Pauldeep Bains

MOTION TO DISMISS CASE
6-12-18 [[57](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

The Chapter 13 Trustee moves to dismiss case on grounds that the Debtor has not turned over any and all tax refunds over and above \$2,000.00 within 10 days of receipt as stated in the order confirming plan filed on April 22, 2016. The Debtor's income tax returns for the 2017 tax year show that the Debtor received a refund of \$2,414.00 from the Internal Revenue Service and a refund of \$384.00 from the Franchise Tax Board. The Debtor is required to turn over the sum of \$798.00 in accordance with the order confirming.

The Debtor filed a response objecting to dismissal of his case since he has turned over the required funds to the Trustee.

The funds in the sum of \$798.00 having been turned over to the Trustee, cause does not exist to dismiss this case. The motion is denied and the case is not dismissed.

The court will enter an appropriate minute order.

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated June 10, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,440.00, which represents approximately .56 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$5,650.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

7. [18-23608](#)-B-13 RAJESH KAPOOR
RJ-1 Richard L. Jare
Thru #9

MOTION TO VALUE COLLATERAL OF
RASHMI KAPOOR
6-12-18 [[11](#)]

Tentative Ruling: The Motion to Value Collateral of Rashmi Kapoor 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 having been filed, the court will address the merits of the motion at the hearing.

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

As Creditor points out in opposition to the motion filed at docket control number RJ-2, another court found and determined that the Debtor repeatedly lied under oath about financial matters in the course of proceedings before it. And now, the Debtor appears to be doing the same in this court regarding the value of real property located at 3724 Saintsbury Drive, Sacramento, California ("Property").

Initially, the court excludes Creditor's "Zillow" evidence as both hearsay and not credible. *In re Darosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010); *see also DeBilio v. Golden (In re DeBilio)*, 2014 WL 4476585, *7 (9th Cir. BAP 2014) (citation omitted); *In re Cocreham*, 2013 WL 4510694, *3 (Bankr. E.D. Cal. 2013) (citations omitted).

That said, the Debtor filed schedules in April 2018 in his prior bankruptcy case, case no. 18-21550, in which he valued the Property at \$359,000. Those schedules were signed under penalty of perjury. Two months later, in June 2018 in this case, the Debtor again filed schedules, under penalty of perjury, in which he now values the Property, in the same condition, at \$330,000. The Debtor provides no explanation for the difference in value two months apart, and the court perceives none. So then, was the Debtor untruthful in the prior bankruptcy case or is he now untruthful in this one? In any case, the Debtor's opinion of value is not credible and the court does not believe the Debtor's testimony of value stated in his declaration filed in support of this motion. Therefore, the Debtor has not carried his burden and the motion will be denied without prejudice.

The court will enter an appropriate minute order.

8. [18-23608](#)-B-13 RAJESH KAPOOR
RJ-2 Richard L. Jare

MOTION TO VALUE COLLATERAL OF
RASHMI KAPOOR
6-12-18 [[15](#)]

Tentative Ruling: The Motion to Value Collateral of Rashmi Kapoor 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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtor's interest in real property located at 446 Sector 21, Panchloulia, India ("Property") has already been adjudicated and established and will not be re-litigated here, particularly in the context of a motion to value. Furthermore, as stated at docket 58, another court has already found and determined that the Debtor repeatedly lied under oath in the course of proceedings before it. And in the context of the motion to value at RJ-1, this court also concluded that the Debtor lacks credibility and his testimony based on different values stated under oath in schedules filed two

months apart without any evidence of any significant change to substantiate the difference is not believable. That credibility determination applies equally here which means the court does not believe the Debtor's testimony of value in his declaration filed in support of this motion. And that also means for this motion, the Debtor has not carried his burden. Therefore, this motion will be denied without prejudice.

The court will enter an appropriate minute order.

9. [18-23608](#)-B-13 RAJESH KAPOOR MOTION TO CONVERT CASE FROM
[TLA](#)-2 Richard L. Jare CHAPTER 13 TO CHAPTER 7
7-16-18 [[60](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Since this is an (f)(2) motion, Debtor will be given an opportunity to file a response to the motion to convert. Debtor's response shall be filed and served by August 14, 2018. Creditor may file and serve a reply by August 21, 2018. The motion will be continued to and heard on August 28, 2018, at 1:00 p.m.

The court will enter an appropriate minute order.

Tentative Ruling: Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan cannot be fully assessed for feasibility. The previously confirmed plan proposed a monthly plan payment of \$7,020.00. According to Schedules I and J filed on December 7, 2016, the Debtor's monthly net income is \$7,024.23. The Debtor did not file amended Schedules I and J or other evidence or explanation to support the decrease plan payment to \$1,050.00 for the remaining 38 months of the plan. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(3) and (a)(6).

Second, the plan proposes to pay no post-petition mortgage contract payments to Technology Credit Union for the months of July 2018 through December 2018. The Debtor has not provided any evidence or documentation to support a 6-month delay or suspension of the contract mortgage payments. The plan proposes an impermissible modification of the secured claim, which is the holder of the first deed of trust on the Debtor's principal residence. No evidence that the lender has consented to or is considering a loan modification has been presented.

Third, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$5,540.00, which represents the plan payment due on June 25, 2018. By the time this matter is heard, an additional plan payment in the amount of \$1,050.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

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

The court's decision is to deny without prejudice 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 June 29, 2018, by Debtor's voluntary request (case no. 17-28118, dkts. 26, 27). 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 he elected to dismiss his previous case because he couldn't afford plan payments after the first mortgage payment increased from \$2,780.00 to \$3,617.00 per month. He contends that his circumstances have now changed because he is willing to sell his home immediately. According to the Debtor, he needs a few months to complete this sale. Debtor's current plan proposes a maximum of 6 payments toward regular ongoing payments to the first deed of trust holder without making payments toward arrears since the arrears will be paid off at the time of the sale of the real property.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor states that his circumstances have changed because he is willing to sell his home immediately. However, the Debtor has provided no evidence that he has taken steps to sell his property, such as finding a real estate agent or broker to list his house for sale. At this point, the sale of Debtor's home is merely speculative.

The motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

The court will enter an appropriate minute order.

12. [16-23919](#)-B-13 TONI HERRERA
[SLE](#)-5 Steele Lanphier

MOTION TO MODIFY PLAN
6-27-18 [[91](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Confirm Third Modified Plan Dated June 25 [sic], 2018, 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 filed on June 27, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. [18-22221](#)-B-13 BENJAMIN/CYNTHIA BELASCO MOTION TO CONFIRM PLAN
[SLE](#)-1 Steele Lanphier 6-12-18 [[22](#)]

Tentative Ruling: The Motion to Confirm First [Amended] Plan Dated April 13, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

The terms for payment of the Debtors' attorney's fees are unclear. The June 12, 2018, amended plan states that \$2,310.00 was paid prior to the filing of the petition and \$1,690.00 will be paid through the plan. The June 12, 2018, amended Rights and Responsibilities of the Chapter 13 Debtor stated that \$1,690.00 was paid prior to the filing of the petition. The April 13, 2018, Form 2030 Disclosure of Compensation of Attorney for Debtor(s) states that \$1,195.00 was paid prior to the filing of the petition and \$2,805.00 will be paid through the plan. The April 13, 2018, Statement of Financial Affairs, Question 16, states that the attorney was paid \$2,000.00 prior to the filing of the petition. The Debtors have not complied with 11 U.S.C. § 1325(a)(1).

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

The court will enter an appropriate minute order.

14. [15-28829](#)-B-13 WAGMA SAFI CONTINUED MOTION TO DISMISS
[JPJ](#)-2 Mitchell Abadallah CASE
[Thru #15](#) 5-17-18 [[161](#)]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor 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 is not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

15. [15-28829](#)-B-13 WAGMA SAFI MOTION TO MODIFY PLAN
[MLA](#)-8 Mitchell Abadallah 6-12-18 [[166](#)]

Tentative Ruling: The Motion to Confirm Third Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,035.12, which represents approximately 8 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$129.39 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

16. [18-20732](#)-B-13 DAWN BUTLER
[JPJ](#)-1 Mikalah Liviakis

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 4
6-7-18 [[18](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

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

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

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$698.15. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 10, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 9, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 filed on June 11, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18. [18-21243](#)-B-13 VLADIMIR MAXIMOV
[JPJ](#)-1 Mark Shmorgon

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 5
6-7-18 [[31](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 5-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 5-1. The claim is asserted to be in the amount of \$1,179.77. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 11, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 3, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

19. [17-27445](#)-B-13 BRIAN/WENDY NICKLE
[KWS](#)-1 Kyle W. Schumacher

MOTION TO MODIFY PLAN
6-22-18 [[50](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 22, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

20. [18-22045](#)-B-13 ALLEAN BROWN ORDER TO SHOW CAUSE - FAILURE
[Thru #24](#) Pro Se TO PAY FEES
6-11-18 [[31](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due June 4, 2018. The court's docket reflects that the default has not been cured. The docket also reflects that the clerk has issued another order to show cause based on the Debtor's nonpayment of the installment due July 5, 2018. Dkt 45.

The court will enter an appropriate minute order.

21. [18-22045](#)-B-13 ALLEAN BROWN ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
7-9-18 [[45](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The case having been dismissed at Item #20, the order to show cause is dismissed as moot.

The court will enter an appropriate minute order.

22. [18-22045](#)-B-13 ALLEAN BROWN CONTINUED OBJECTION TO
[JPJ](#)-1 Pro Se CONFIRMATION OF PLAN BY JAN P.
JOHNSON
5-24-18 [[23](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The case having been dismissed at Item #20, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

23. [18-22045](#)-B-13 ALLEAN BROWN CONTINUED MOTION TO DISMISS
[JPJ](#)-2 Pro Se CASE
5-29-18 [[26](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The case having been dismissed at Item #20, the motion to dismiss is dismissed as moot.

The court will enter an appropriate minute order.

24. [18-22045](#)-B-13 ALLEAN BROWN
[MJ-1](#) Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
5-15-18 [[19](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The case having been dismissed at Item #20, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

25. [18-21748](#)-B-13 DAMITA JOHNSON
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-29-18 [[21](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due June 25, 2018. The court's docket reflects that the default was cured on July 2, 2018, and an additional payment was made on July 12, 2018. The latter payment constituted the final installment.

The court will enter an appropriate minute order.

26. [18-23153](#)-B-13 DAVID EMBERLIN
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[16](#)]

CONTINUED TO 8/07/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS HELD 8/02/18.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The court will enter an appropriate minute order.

27. [17-23654](#)-B-13 SHARON OGBODO
[JPJ](#)-1 Matthew J. DeCaminada

OBJECTION TO CLAIM OF NATIONAL
STUDENT LOAN PROGRAM, CLAIM
NUMBER 12
6-8-18 [[91](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 12-1 of National Student Loan Program and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of National Student Loan Program ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$57,294.62. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 4, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed May 25, 2018.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

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

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

28. [18-23154](#)-B-13 JAIME GUEVARA
[JPJ](#)-1 Jeffrey M. Meisner

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[15](#)]

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

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 July 27, 2018. The confirmation hearing for the amended plan is scheduled for September 11, 2018. The earlier plan filed May 18, 2018, is not confirmed.

The court will enter an appropriate minute order.

29. [18-22359](#)-B-13 KIMBERLY CHILDRESS ORDER TO SHOW CAUSE - FAILURE
Thru #30 Richard L. Jare TO PAY FEES
6-25-18 [[37](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due June 19, 2018. The court's docket reflects that the default has not been cured. The docket also reflects that the clerk has issued another order to show cause based on the Debtor's nonpayment of the installment due July 19, 2018. Dkt 43.

The court will enter a appropriate minute order.

30. [18-22359](#)-B-13 KIMBERLY CHILDRESS CONTINUED OBJECTION TO
[JPJ-1](#) Richard L. Jare CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
6-4-18 [[33](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The case having been dismissed at Item #29, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

Debtor's Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 filed on June 22, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

32. [18-21262](#)-B-13 JOHN SAECHAO MOTION TO CONFIRM PLAN
[PGM-3](#) Peter G. Macaluso 6-16-18 [[40](#)]
Thru #33

Tentative Ruling: The Motion to Confirm Debtor's Amended Plan Filed on June 16, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Feasibility depends on the granting of a motion to avoid lien held by Capital One (USA), N.A. That motion is granted at Item #33, PGM-4.

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

The court will enter an appropriate minute order.

33. [18-21262](#)-B-13 JOHN SAECHAO MOTION TO AVOID LIEN OF CAPITAL
[PGM-4](#) Peter G. Macaluso ONE BANK (USA), N.A.
6-16-18 [[46](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(f)(1)(A) 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtor's property commonly known as 7720 McMullen Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,267.06 pursuant to claim number 9 filed with the court on May 3, 2018. An abstract of judgment was recorded with Sacramento County on February 9, 2018, which encumbers the Property.

The Debtor states that he had financed the Property for his sister at the time of purchase in August 2012 since she could not qualify, and that his sister would live at the property with her children and make all payments. On or about October 25, 2012, Debtor filed a quit claim to his sister, at which time there was no equity on the Property. Debtor asserts that his sister made all payments on the loan and that he believes he has no interest in the Property. Oddly, despite claiming no interest in the Property, Schedule C filed March 5, 2018, states that the current value of the portion Debtor owns is \$2,920.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$292,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$28,075.00 on Schedule C.

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

The court will enter an appropriate minute order.

34. [18-23262](#)-B-13 DAWNIEL TAYLOR
[JPJ](#)-1 Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
6-25-18 [[14](#)]

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

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

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,265.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,265.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed May 24, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

35. [17-26363](#)-B-13 MICHAEL SCHOOL
[JPJ](#)-1 Pauldeep Bains

MOTION TO DISMISS CASE
7-5-18 [[45](#)]

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

The court's decision is to dismiss the case.

The Chapter 13 plan filed October 10, 2017, and confirmed December 8, 2017, states that the Debtor will make a lump sum payment from the sale of the property in month 9, June 2018, to pay all claims in full. To date, the Debtor has not remitted the lump sum payment to the Chapter 13 Trustee.

Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(6). The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

36. [18-23165](#)-B-13 AREN JACKSON
[JPJ](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[12](#)]

CONTINUED TO 8/07/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS HELD 8/02/18.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The court will enter an appropriate minute order.

37. [18-20467](#)-B-13 DAVID BRUCE AND ELAINE MOTION TO CONFIRM PLAN
[FF-2](#) CRAWFORD-BRUCE 6-26-18 [[34](#)]
Gary Ray Fraley

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated June 26, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtors' attorney's fees in connection with plan confirmation is in the amount of \$4,200.00. This exceeds the maximum fee that may be charged in a business case, which is \$4,000.00, pursuant to Local Bankr. R. 2016-1.

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

The court will enter an appropriate minute order.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case provided that the Debtor files a modified plan by August 14, 2018.

The Chapter 13 Trustee moves to dismiss the case on grounds that the plan does not provide treatment for the priority claim filed by Franchise Tax Board in the amount of \$522.23 and because the plan will take a total of 66 months to complete, which exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4), due to a claim filed late by Ocwen for the first deed of trust on the Debtor's real property.

The Debtor filed a response stating that he will need 2 to 3 weeks to file and set for hearing a modified plan. The court shall permit the Debtor to file a modified plan by August 14, 2018. If a modified plan is not filed by that date, the case shall be dismissed on the Trustee's ex parte application.

The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

39. [18-23176](#)-B-13 PEDRO AVINA
[JPJ](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[14](#)]

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

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 July 24, 2018. The confirmation hearing for the amended plan is scheduled for September 4, 2018. The earlier plan filed May 21, 2018, is not confirmed.

The court will enter an appropriate minute order.

40. [18-20980](#)-B-13 LUTRINA BOOTH AND TERRY OBJECTION TO CLAIM OF PENNYMAC
[TAG](#)-1 EASMON LOAN SERVICES, LLC, CLAIM
Aubrey L. Jacobsen NUMBER 20
6-4-18 [[18](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Debtors having filed a Withdrawal of Objection to Proof of Claim No. 20 Filed by PennyMax Loan Services, LLC, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

41. [18-23782](#)-B-13 DENNIS/MARY BOSTON
[SLH](#)-1 Seth L. Hanson
Thru #44

MOTION TO AVOID LIEN OF SIERRA
SHARKS SWIM TEAM, INC.
7-3-18 [[16](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Avoid the Fixing of Lien of Sierra Sharks Swim Team, Inc., Pursuant to 11 U.S.C. § 522(f)(1)(A) 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This is a request for an order avoiding the judicial lien of Sierra Sharks Swim Team, Inc. ("Creditor") against the Debtors' property commonly known as 366 Anacapa Drive, Roseville, California ("Property").

A judgment was entered against Debtor Dennis Boston in favor of Creditor in the amount of \$25,694.00. An abstract of judgment was recorded with Placer County on February 8, 2016, which encumbers the Property. All other liens recorded against the Property total \$443,794.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$534,079.00 as of the date of the petition.

Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C.

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

The court will enter an appropriate minute order.

42. [18-23782](#)-B-13 DENNIS/MARY BOSTON
[SLH](#)-2 Seth L. Hanson

MOTION TO AVOID LIEN OF SELENE
RAMOS
7-3-18 [[21](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion to Avoid the Fixing of Lien of Selene Ramos Pursuant to 11 U.S.C. § 522(f)(1)(A) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Selene Ramos. The address used by the Debtors does not appear to match that provided in the Certificate of Lien. Therefore, the court's decision is to deny the motion without prejudice.

The court will enter an appropriate minute order.

Tentative Ruling: The Motion to Value Collateral of Exeter Finance LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Debtors' motion to value the secured claim of Exeter Finance LLC ("Creditor") is accompanied by Debtor Dennis Boston's declaration. Debtors are the owners of a 2013 Ford F-150 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$13,125.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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.

Opposition

Creditor has filed an opposition asserting that the Debtors' valuation is improper because it is not the retail value. Creditor asserts that the replacement value a retail merchant would charge for the Vehicle is \$15,758.00 based on the N.A.D.A. Official Used Car Guide.

Discussion

The value offered by the Creditor appears to be based on a clean retail evaluation by N.A.D.A. Official Used Car Guide. This valuation presumes that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." *Cf.* <http://www.nadaguides.com>.

The retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This may not be the case. Second, 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." What must be determined, therefore, is what a retailer would charge for this particular Vehicle as it is.

Nor have the Debtors proven to the court's satisfaction the replacement value of the Vehicle. There is no evidence from the Debtors on this point. The standard is what a used car dealer would sell the Vehicle for to the Debtor.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtors have the burden of proof. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

44. [18-23782](#)-B-13 DENNIS/MARY BOSTON
[TGM](#)-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY CASCADE FUNDING
MORTGAGE TRUST 2017-1
6-27-18 [[11](#)]

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

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

Objecting creditor Cascade Funding Mortgage Trust 2017-1 holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$106,063.78 in pre-petition arrearages as of June 29, 2018, based on claim number 1. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 15, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

45. [17-26989](#)-B-13 CARRIE BAILON MACDONALD MOTION FOR RELIEF FROM
[SDB](#)-1 W. Scott de Bie AUTOMATIC STAY
6-29-18 [[29](#)]

CARRIE BAILON MACDONALD VS.

Final Ruling: No appearance at the July 31, 2018, hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Debtor Carrie MacDonald ("Movant") seeks relief from the automatic stay in order to allow a dissolution of marriage filed by Movant on September 2013 to proceed ("State Court Litigation"). The Declaration of Carrie MacDonald is filed in support of the motion.

The MacDonald Declaration states that the Movant commenced the marital dissolution pre-petition and that the Chapter 13 bankruptcy has created an automatic stay preventing the marital dissolution action from proceeding. Movant states that the confirmed Chapter 13 plan filed October 26, 2017, requires her to pay a lump sum payment from the proceeds of the sale of her community property interest in a single family residence commonly known as 9499 Bowmont Way, Elk Grove, California. The property cannot be sold until there is an adjudication of her community property interest in the property and a division of assets within the marital dissolution proceeding.

No parties have filed opposition to the motion to date.

The court finds that the nature of the State Court Litigation case warrants relief from stay for cause.

The court shall issue a minute order modifying the automatic stay to allow Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of any judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

46. [18-23089](#)-B-13 STACY BRACKIN
[JPJ](#)-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-18 [[14](#)]

Final Ruling: No appearance at the July 31, 2018 hearing is required.

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

There being no other objection to confirmation, the plan filed May 16, 2018, will be confirmed.

The court will enter an appropriate minute order.

47. [17-26793](#)-B-13 SINGLA KARAN AND ROSHAN OBJECTION TO CLAIM OF LVNV
[JPJ](#)-1 LAL FUNDING, LLC, CLAIM NUMBER 8-1
James L. Keenan 6-7-18 [[24](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 8-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 8-1. The claim is asserted to be in the amount of \$4,493.17. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about February 24, 2010, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 13, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

48. [17-26694](#)-B-13 TAMARA GEREN
[PLC](#)-5 Peter L. Cianchetta

OBJECTION TO CLAIM OF SYSTEMS &
SERVICES TECHNOLOGIES, INC.,
CLAIM NUMBER 4
5-25-18 [[71](#)]

Final Ruling: No appearance at the July 31, 2018, hearing is required.

Debtor's Objection to Claim No. 4 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4 of Systems & Services Technologies, Inc. as servicing agent for CIGPF I CORP and disallow the claim in its entirety.

Debtor Tamara Geren ("Objector") requests that the court disallow the claim of Systems & Services Technologies, Inc. as servicing agent for CIGPF I CORP ("Creditor"), Claim No. 4. The claim is asserted to be in the amount of \$3,666.25. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about May 5, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on October 9, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

49. [18-20994](#)-B-13 BRIAN HAMILTON MOTION TO CONFIRM PLAN
[SCW-1](#) Samuel C. Williams 6-14-18 [[28](#)]
Thru #50

Tentative Ruling: The Motion to Confirm Amended Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, feasibility depends on sustaining the Debtor's objection to proof of claim of Shasta County Tax Collector. That objection is overruled at Item #50, SCW-2.

Second, the plan does not specify a class or monthly dividend for the secured claim of Shasta County Tax Collector.

Third, the plan does not properly account for all payments the Debtor has paid to the Trustee to date. The plan proposes monthly plan payments of \$200.00 but the Debtor has been making monthly plan payments to the Trustee in the amount of \$500.00

The first amended plan filed June 14, 2018, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

50. [18-20994](#)-B-13 BRIAN HAMILTON OBJECTION TO CLAIM OF SHASTA
[SCW-2](#) Samuel C. Williams COUNTY TAX COLLECTOR, CLAIM
NUMBER 1
6-15-18 [[32](#)]

Tentative Ruling: Debtor's Objection to Claim of Shasta County Tax Collector has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to overrule the objection.

Debtor Brian Hamilton ("Objector") requests that the court disallow the claim of Shasta County Tax Collector ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$24,349.92. Objector contends that the assessment was owed for the 2010 tax year and that he had already paid all property taxes due in 2011, leaving a balance of \$0.00. Objector does not dispute that he owes property taxes for the 2017 tax year.

Objections were filed by Creditor and the Chapter 13 Trustee.

Creditor acknowledges that Objector did make a payment in 2011 but states that the \$24,349.92 balance is for taxes billed after the July 29, 2011, payment. The unpaid fiscal years are 2011-2012, 2012-2013, 2013-2014, 2015-2016, and 2017-2018. Creditor has filed custodial records as exhs. A-H, dkt. 43 in support of its opposition.

The Trustee's response opposes the Debtor's objection only to the extent that it would require the Trustee to recover any amount already paid to the Creditor in accordance with the original plan. The Trustee has paid a total of \$1,179.75 to the Creditor on

the claim.

Discussion

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).

The court finds that the amount claimed in Claim No. 1-1, as supplemented by Creditor's exhs. A-H, dkt. 43, is valid. The Objector has not satisfied its burden of overcoming the presumptive validity of the claim.

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

The court will enter an appropriate minute order.

51. [18-22794](#)-B-13 HAROLD HODSDON
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-9-18 [[24](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The Order to Show Cause was issued due to Debtor's failure to pay the Second Installment of \$77.00 due July 3, 2018. The court's docket reflects that the default has not been cured. However, the Debtor did pay the First Installment of \$79.00 due June 4, 2018. Rather than dismiss this case, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

52. [13-32298](#)-B-13 WILLIAM/DEBORAH JENSEN MOTION TO APPROVE LOAN
[DRE](#)-1 D. Randall Ensminger MODIFICATION
6-30-18 [[37](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Approve Loan Modification is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, the address used by the Debtors for service does not appear to match that provided in Claim Number 9 where notices should be sent. Claim Number 9 was filed by Wells Fargo Bank, N.A. and because this is a loan modification with and approved by Wells Fargo, the court is satisfied that Wells Fargo is aware of the Debtors' request for court approval of the loan modification.

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

Debtors seek court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a recast agreement that will reduce Debtors' mortgage payment from the current \$1,410.00 a month to \$1,404.62 a month for 199 months. The recast effective date is July 1, 2018, and it will reduce the interest rate to 4.80%. Exh. C, dkt. 40.

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

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

The court will enter an appropriate minute order.