UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: September 3, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 3, 2019 at 1:00 p.m.

1.	19-24202-B-13 JPJ-1	HORACE/ALBERTA HODGES Scott D. Shumaker	OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON AND/OR MOTION TO DISMISS CASE 8-6-19 [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). 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 claim of Travis Credit Union is misclassified as a Class 4 claim when it should be in Class 2. The pre-written language of the form plan defines Class 2 claims as those which mature after the completion of the plan, are not in default, and are not modified by a plan. According to the proof of claim filed by Travis Credit Union, the Debtors are delinquent $488.27.

The plan filed July 2, 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.

2.	14-27007-B-13 DEF-5 **Thru #3**	WILLIAM VENTURA David Foyil	MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR 8-9-19 [78]

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 substitute Julia Anne Vancil to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Julia Anne Vancil moves to act as the representative of the deceased debtor, William Ventura, who passed away on June 10, 2019, in this bankruptcy proceeding. Julia Anne Vancil is the friend of the deceased debtor and was nominated successor trustee in the debtor's Certificate of Trust. Dkt. 81, exh. A, para. II.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [FED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Julia Anne Vancil for William Ventura as successor-in-interest and to waive the § 1328 and financial management requirements for William Ventura. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will enter a minute order.

3. 14-27007-B-13 DEF-6 | WILLIAM VENTURA
David Foyil | MOTION TO RESTRICT OR REDACT PUBLIC ACCESS RE 8-16-19 [84]

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 restrict public access to Docket 81.

Debtor's counsel David Foyil ("Movant") seeks to restrict public access Docket 81, which included unredacted documents that disclosed personally identifiable information and which should have been redacted pursuant to Bankruptcy Rule 9037. Movant also requests to file a replacement filing in the form of an amended exhibit. The replacement filing is substantively identical to the original filing in all respects except for the removal of imperfectly redacted personal identifiable information. Movant further requests that the replacement filing be deemed to have been filed on the date the original filing was made to ensure that Debtor is no prejudiced in any manner.

Movant submits that Fed. R. Bankr. P. 9037(a) creates a presumption that "cause" exists under § 107(c) for issuing an order protecting an individual from the disclosure of information restricted by Fed. R. Bankr. P. 9037(a).

Discussion

Fed. R. Bankr. P. 9037(a) prescribes that a party making an electronic filing may include personally identifiable information only in redacted form as follows: the last four digits of a consumer's financial-account number or social security number, the year of an individual's date of birth, and the initials of any minor.

Additionally, Rule 9037(d) prescribes that, for cause, the court may by order: (1) require redaction of additional information or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

Section 107(c) of the Bankruptcy Code permits the court, "for cause," to protect an individual with respect to any paper or pleading filed in a bankruptcy case "to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." 11 U.S.C. § 107(c).

The court has authority under Rule 9037(d) to require redaction of additional information Docket 81 includes confidential personally identifiable information, the disclosure of which would create an undue risk of identity theft or other unlawful injury to the individual or the individual's property pursuant to § 107(c).

Therefore, the court will allow the amendment to the unredacted documents and order that the public be restricted from accessing Docket 81. The original unredacted documents shall be retained by the Clerk of Court and accessed only by the applicable Debtor, Debtor's counsel, the U.S. Trustee, and any applicable case trustee and such trustee's counsel upon request by any such party, consistent with procedures of this court. The motion will be granted.

The court will enter an appropriate minute order.

4. 19-22309-B-13 LORNA TORRES-DEL VALLE MOTION TO CONFIRM PLAN
NSV-1 Nima S. Vokshori 7-10-19 [29]

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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan 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 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.

5. 19-24313-B-13 ANN CONRAD
JHW-1 Travis E. Stroud
Thru #6

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA INC.
8-8-19 [16]

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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of Santander Consumer USA Inc.'s objection, the Debtor filed an amended plan on August 20, 2019. The confirmation hearing for the amended plan has not been scheduled however. Nonetheless, the earlier plan filed July 9, 2019, is not confirmed.

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

The court will enter a minute order.

6. 19-24313-B-13 ANN CONRAD
JPJ-1 Travis E. Stroud

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-14-19 [20]

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 August 20, 2019. The confirmation hearing for the amended plan has not been scheduled however. Nonetheless, the earlier plan filed July 9, 2019, is not confirmed.

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

The court will enter a minute order.

7.	19-20715-B-13 MJD-4	DANIEL/MICHELE MILLS Matthew J. DeCaminada	OBJECTION TO CLAIM OF REGIONAL ACCEPTANCE CORPORATION, CLAIM NUMBER 19 7-18-19 [52]

Final Ruling

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. 19-1 of Regional Acceptance Corporation and the claim is disallowed in its entirety.

Daniel Mills and Michele Mills ("Objector") requests that the court disallow the claim of Regional Acceptance Corporation ("Creditor"), Proof of Claim No. 19 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $28,247.92. 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 April 18, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 24. The Creditor's proof of claim was filed May 10, 2019.

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

The court will enter a minute order.

8. 19-23616-B-13 MARK BRASHLEY
WW-2 Mark A. Wolff

MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION FOR ORDER INSTRUCTING CHAPTER 13 TRUSTEE
8-16-19 [39]

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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Midland Mortgage ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a Federal Housing Administration Home Affordable Modification Program (FHA HAMP) Stand-Alone Loan Modification Trial Plan that will reduce Debtor's mortgage payment from the current $1,918.18 a month to $1,760.42 a month for months October through December 2019. Through the modification, all past due interest, fees, and escrow shortages will be capitalized. The new interest rate is 4.125% and the new principal balance is $220,044.82.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

9. 19-24217-B-13 JPJ-1 **Thru #10**
BRETT BAILEY
Scott M. Johnson
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-6-19 [13]

WITHDRAWN BY M.P.

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) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other sustained objection to confirmation, the plan filed July 2, 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 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.

10. 19-24217-B-13 KL-1
BRETT BAILEY
Scott M. Johnson
OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC
8-8-19 [16]

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 overrule the objection and confirm the plan.

Objecting creditor Ditech Financial LLC holds a deed of trust secured by the Debtor's residence. The creditor asserts $1,994.72 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it is in the process of preparing a proof of claim, the creditor provides no evidence to support the amount of 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 July 2, 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.

11. 19-20622-B-13 MARCO CASTILLO — MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 7-22-19 [37]

No Ruling

12. 19-23422-B-13 DANIEL ALTSTATT
Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-19 [28]

CITY OF SACRAMENTO VS.

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 grant the motion.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court also takes judicial notice of the docket in this case and of the pending state court proceedings identified below. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

The City of Sacramento ("City") seeks relief from the automatic stay, to the extent the automatic stay is even applicable to the City's action, with respect to state court nuisance abatement litigation involving real property commonly known as 4432 H Street, Sacramento, California (the "Property"). Movant has provided the Declaration of Jose Mendez to introduce into evidence the documents upon which it bases the claim.

City states that it is exempt from the automatic stay because its action as a governmental unit falls within the police and regulatory authority to abate a public nuisance that is injurious to the health and safety of the public. *See* 11 U.S.C. § 362(b)(4). Notwithstanding the foregoing exemption from the automatic stay, in an abundance of caution, City moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to permit the prosecution in *City of Sacramento v. Daniel J. Alstatt*, Sacramento County Superior Court case no. 34-2015-00184866 (hereinafter the "State Court Nuisance Abatement Litigation") including, but not limited to, enforcement of the permanent injunction against Daniel Alstatt ("Debtor") and the recovery of litigation costs.

According to City and as supported by the Declaration of Mendez, the Property has been a blight on the community for many years, with an accumulation of junk and debris, junk vehicles, and hazardous or unsanitary premises on the Property.

Debtor has filed a response and supplemental response objecting to City's motion. Debtor goes into great length explaining City's alleged unconstitutional elder abuse and fraud. Debtor has also filed a last-minute (and untimely) motion to strike.

Discussion

An exception under 11 U.S.C. § 362(b)(4) provides that a bankruptcy filing does not stay the actions of a governmental entity enforcing its police or regulatory power. One of the purposes of this exception is to protect public health and safety. *Midatlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection* 474 U.S. 494, 502 (1986). The exception a11ows for the enforcement of laws affecting health, welfare, morals, and safety despite the pendency of bankruptcy proceedings. *Lockyer v. Mirant Corp.* 398 F.3d 1098, 1107 (9th Cir. 2005). A suit comes within the "police or regulatory powers" exception if it passes either the "pecuniary purpose" test or the "public purpose" test. *Universal Life Church, Inc. v. United States (In re Universal Life Church),* 128 F.3d 1294, 1297 (9th Cir. 1997).

Here, the "public purpose" test is satisfied because the Property is the subject of the pending State Court Nuisance Abatement Litigation. That litigation is an action by the City to protect the health and safety of the community which makes it an action by a governmental unit exercising its police and regulatory powers. The City is acting to

effectuate public policy and not adjudicate private rights. Under those circumstances, the State Court Nuisance Abatement Litigation, and the City's actions in and in relation to that proceeding, are exempt from the automatic stay of § 362(a)(1), (2), (3), and (6) under § 362(b)(4). And to the extent they are not, the City has demonstrated cause under § 362(d)(1) for relief from the automatic stay of § 362(a) based on its pending state court abatement action. *See LaPierre v. Advanced Medical Spa, Inc. (In re Advanced Medical Spa)*, 2016 WL 6958130, *5-6 (9th Cir. BAP 2016) (explaining that action pending in another forum is cause).

The court is aware that the City also seeks to recover costs incurred in the litigation. However, the City's request for that monetary relief is not solely for the benefit of any discrete and identifiable individual or entity. Rather, the purpose is simply to recover the cost of litigation. Such requests for monetary relief do not remove the action from the § 362(b)(4) exemption. *Universal Life Church*, 128 F.3d at 1298-1299; *California ex rel. Brown v. Villalobos*, 453 B.R. 404, 412-413 (D. Nev. 2011). In fact, judgment against the Debtor may be entered for civil penalties and abatement costs without removing the State Court Nuisance Abatement Litigation from the § 362(b)(4) exemption. *U.S. v. Federal Resource Corp.*, 525 B.R. 759, 767 (D. Idaho 2015).

In short, lifting the automatic stay is not necessary to allow the State Court Nuisance Abatement Litigation to proceed but if it is, the stay is modified as noted below.

As to the Debtor's constitutional and other arguments in opposition to the City's motion, this is not the forum to which those arguments should be presented and it is not the forum in which they are decided in the context of the City's motion. Stay relief litigation is limited to matters under § 362. *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985). Hearings on relief from the automatic stay are handled in a summary fashion. *Id.* The validity of an underlying claim or defense is not litigated during the stay relief hearing. *Id.* Therefore, the Debtor's arguments in opposition to the State Court Nuisance Abatement Litigation are preserved and the Debtor is (and remains) free to make those arguments before the state court.

The court shall issue a minute order confirming that the State Court Nuisance Abatement Litigation, and the City's actions in and in relation to that proceeding, are exempt from § 362(a) for all purposes under § 362(b)(4) and, alternatively, that the automatic stay of § 362(a) is modified to allow City to continue with the State Court Nuisance Abatement Litigation, any appeals, and further nuisance abatement proceedings or process and activities in and related to the state court action and the Property.

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.

13. 19-24624-B-13 SJT-1 THOMAS/SELIMA GARRIS
Susan J. Turner

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
7-24-19 [8]

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 Golden 1 Credit Union at $6,300.00.

Debtors' motion to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Chevy Spark ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $6,300.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Golden 1 Credit Union is the claim which may be the subject of the present motion.

Discussion

The motion states that the loan secured by the Vehicle was made more than 910 days before this case was filed. However, the Debtors provide no evidence in the form of exhibits or a declaration as to the exact date the loan was acquired.

A review of Claim No. 3 shows that the original lienholder was Future Ford of Sacramento and that the lien on the Vehicle's title secured a purchase-money loan incurred on June 30, 2016, which is more than 910 days prior to filing of the petition. The loan was then assigned from Suburban Motor Company #4036 to Golden 1 CU but there is no listed date of assignment, how Suburban Motor Company #4036 even had an interest in the Vehicle, and whether the assignment even pertained to this Vehicle since the evidence of assignment is one extracted page from a missing full contract. *See* Claim No. 3-1 Attachment, p. 4.

Nonetheless, Claim No. 3 filed by Golden 1 Credit Union lists the claim as secured in the amount of $6,300.00 and unsecured in the amount of $3,015.49. This matches the valuation proposed by the Debtors. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $6,300.00. *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.

14. 19-22526-B-13 KENNETH/ANN VALLIER
MJD-2 Matthew J. DeCaminada

MOTION FOR DETERMINATION OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES OF SIERRA PACIFIC MORTGAGE COMPANY, INC.
7-24-19 [30]

Final Ruling

The court has before it *Debtor's Motion for Determination of Post-Petition Mortgage Fees, Expenses, and Charges of Sierra Pacific Mortgage Company, Inc.* filed by Kenneth and Ann Marie Vallier ("Debtors"). Creditor Sierra Pacific Mortgage Co., Inc. ("Creditor") filed a response.

The court has reviewed the motion, response, and all related declarations and exhibits. The court takes judicial notice of the docket and claims register in the case. The court has determined that oral argument will not assist in the resolution of the motion and therefore issues this ruling as a Final Ruling. *See* Local Bankr. R. 9014-1(h).

Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9104(c).

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

Background

On July 17, 2019, Creditor filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges in which it asserts a claim to $1,012.45 in fees related to this case. Those fees are as follows:

Attorney's Fees	4/29/19	$300.00
Bankruptcy Proof of Claim Fees	7/2/2019	$350.00
Mailings	4/29/2019, 7/2/2019	$ 12.45
B410 Preparation	7/2/2019	$250.00
Notice of Postpetition Mortgage Fees, Expenses, and Charges	7/12/2019	$100.00

Debtors contend that Creditor does not establish any contractual or statutory entitlement to the fees. Debtors also state that, as to attorney's fees claimed, Creditor's notice does not specify how much time was required for the enumerated tasks, does not specify the hourly rate being charged, and does not state the classification of the person who allegedly performed the tasks related to the fee. Debtor asserts that the claimed fees totaling $1,012.45 are excessive in a run-of-the-mill Chapter 13 in which the Creditor's claim is fully provided for in Class 1 of the Chapter 13 plan.

Creditor contends that the Debtor and Creditor expressly contracted to allow Creditor to recoup any reasonable attorney's fees and other charges it may incur while protecting its rights under the deed of trust and its interest in the real property subject to its deed of trust, including in the current bankruptcy proceeding. Creditor also asserts that its fees are reasonable because they are within the Fannie Mae allowable limits. Furthermore, although the fees are billed on a flat fee basis, Creditor asserts the fees requested are reasonable relative to the hourly charge billed by the firm's paralegals and attorneys. Creditor has provided billing records for attorney's and paralegals.

Discussion

Although the court is persuaded that there is a contractual basis for the fees requested, the court is not persuaded that the Creditor has demonstrated the fees requested are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012)

(citations omitted). The fact that the fees claimed are within Fannie Mae parameters does not make them per se reasonable as Creditor suggests. By way of example, although Fannie Mae allows up to $650.00 for proof of claim preparation and plan review and lists tasks that may be compensated within that category of tasks, the court would be hard-pressed to find a $650.00 fee reasonable if all counsel did was spend five minutes reviewing a proof of claim and/or a plan. At that rate, a $650.00 fee for the five minute task equates to an hourly rate of $7,800.00.

Other than the above-noted general statement on its Notice of Postpetition Mortgage Fees, Expenses and Charges, there is no indication how the fees claimed relate to any particular task or the time associated with the fees or the task. Creditor submitted a billing spreadsheet in an effort to justify the fees. However, the spreadsheet is of little assistance because an overwhelming number of the entries (counsel and paralegal) are "lumped." Lumping, or block billing, is a timekeeping practice whereby multiple services are included in a single, aggregated time entry without any breakdown of the time spent on each activity. *See In re Duta*, 175 B.R. 41, 46-47 (9th Cir. BAP 1994). Lumping is universally disapproved by bankruptcy courts. *In re Recycling Indus., Inc.*, 243 B.R. 396, 406 (Bankr. D. Colo. 2000). Lumping prevents the court from conducting a reasonableness analysis. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

For the most part, Creditor's time and task entries include multiple, and in most cases unrelated, tasks on a single day with a single time entry for all tasks performed on the particular date. There is no separate time entry attributed to each individual task, and all tasks are billed under one general entry. As a result, the court is unable to conduct any sort of reasonableness analysis with respect to the individual tasks or total time spent in relation to the fees requested.

Because the Creditor has not carried its burden of establishing the reasonableness of the fees charged to the Debtors, the Debtors' motion for determination is granted and the above-referenced fees charged to the Debtor are disallowed without prejudice.

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

The court will enter a minute order.

15. 19-20927-B-13 LAUREN HAYES — MOTION TO MODIFY PLAN
TLA-1 Thomas L. Amberg — 7-22-19 [24]

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.

16. 18-20128-B-13 SS-4 **Thru #17**
CHARLENE SANDERS
Scott D. Shumaker
OBJECTION TO CLAIM OF SELF HELP FEDERAL CREDIT UNION, CLAIM NUMBER 8
7-15-19 [80]

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. 8-1 of Self Help Federal Credit Union and the claim shall be treated as general unsecured.

Charlene Sanders ("Objector") requests that the court disallow the claim of Self Help Federal Credit Union ("Creditor"), Claim No. 8-1. The claim is asserted to be secured in the amount of $7,783.97. Objector asserts that the claim fails to provide evidence that it is secured, such as through a recorded abstract of judgment, and that the claim should be treated as general unsecured.

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 proof of claim does not provide any evidence that the claim is secured. Therefore, the claim will be treated as a general unsecured claim. Objector satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim shall be treated as general unsecured. 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.

17. 18-20128-B-13 SS-5
CHARLENE SANDERS
Scott D. Shumaker
OBJECTION TO CLAIM OF SELF HELP FEDERAL CREDIT UNION, CLAIM NUMBER 9
7-15-19 [84]

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. 9-1 of Self Help Federal Credit Union and the claim shall be treated as general unsecured.

Charlene Sanders ("Objector") requests that the court disallow the claim of Self Help Federal Credit Union ("Creditor"), Claim No. 9-1. The claim is asserted to be secured in the amount of $18,465.74. Objector asserts that the claim fails to provide evidence that it is secured, such as through a recorded abstract of judgment, and that the claim should be treated as general unsecured.

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 proof of claim does not provide any evidence that the claim is secured. Therefore, the claim will be treated as a general unsecured claim. Objector satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim shall be treated as general unsecured. 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.

18. 19-22529-B-13 TINA ANDRADE
RK-2 Richard Kwun

MOTION TO VALUE COLLATERAL OF MOUNTAIN AMERICA CREDIT UNION
7-30-19 [29]

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.

Debtors' motion to value the secured claim of Mountain America Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Mercedes Benz CLA ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $14,500.00 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. 14-2 filed by Mountain America Credit Union is the claim which may be the subject of the present motion.

Discussion

The motion states that the loan secured by the Vehicle was made more than 910 days before this case was filed. However, the Debtors provide no evidence in the form of exhibits or a declaration as to the exact date the loan was acquired.

A review of Claim No. 14-2 filed by Mountain America Credit Union shows that its lien on the Vehicle's title secures a purchase-money loan incurred on June 15, 2017, which is less than 910 days prior to filing of the petition. *See* Claim No. 14-2 Attachment, p. 3.

The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtor's 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.

19. 18-20631-B-13 SYREETA SHOALS MOTION TO MODIFY PLAN
MC-3 Muoi Chea 7-25-19 [57]

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.	19-24232-B-13 JPJ-1	TIMOTHY/CHRISTINA FRANKS Eric John Schwab	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-6-19 [14]

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 Debtors have failed to file an amended Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys to state the correct amount of attorney's fees. The Debtor has not complied with 11 U.S.C. § 1325(a)(1), (a)(3) and § 521(a)(3).

Second, 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 Calculation of Disposable Income (Form 122C-2) shows that the Debtors' monthly disposable income is $3,535.10 and the Debtors must pay no less than $212,106.00 to unsecured non-priority creditors. The plan pays only $143,736.00 to unsecured non-priority creditors.

The plan filed July 3, 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.

21. 19-23633-B-13 ROBERTO/TRACI TREVIZO MOTION TO CONFIRM PLAN
SLE-1 Steele Lanphier 7-23-19 [24]

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.

22. 17-26434-B-13 TRINA ENOS MOTION TO MODIFY PLAN
PLG-8 Rabin J. Pournazarian 7-19-19 [94]

Tentative Ruling

The motion 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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed a new modified plan on August 26, 2019. The confirmation hearing for the modified plan is scheduled for October 1, 2019. The earlier plan filed July 19, 2019, is not confirmed.

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

The court will enter a minute order.

23.	19-24235-B-13 JPJ-1	STEVEN/GINA WILLIAMS Chad M. Johnson	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-6-19 [21]

CONTINUED TO 9/10/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

24. 19-24237-B-13 **Thru #25** ELENA PEREZ GONZALEZ
Pro Se
OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
8-13-19 [20]

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 Citibank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $48,136.52 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed July 17, 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.

25. 19-24237-B-13 JPJ-1 ELENA PEREZ GONZALEZ
Pro Se
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-14-19 [24]

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 August 8, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor does not have funds to pay the proposed plan payments. Debtor's monthly income on Schedule J, Line 23C is listed as $1,231.00. The proposed plan payments are $1,420.00 for 60 months. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Fourth, the plan cannot be assessed for feasibility. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to her rental property and/or the operation of a business.

Fifth, the Debtor has not amended her petition to include previous cases filed. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is $94,574.00. The amount paid to unsecured creditors is $0.00.

The plan filed July 17, 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.

26.	18-25046-B-13 CYB-2	LORENZO/CORRINA AGUILAR Candace Y. Brooks	MOTION TO MODIFY PLAN 7-10-19 [35]

No Ruling

27. 18-27747-B-13 VIRGINIA HUNT
Steele Lanphier

ORDER TO SHOW CAUSE
8-16-19 [66]

No Ruling

28. 18-27348-B-13 APRIL TURNBULL
PGM-3 Peter G. Macaluso

MOTION TO DETERMINE DISBURSEMENT OF FUNDS RECEIVED AND HELD BY TRUSTEE
7-29-19 [64]

Final Ruling

The court has before it a *Motion to Determine Disbursement of Funds Received and Held by Trustee* filed by Debtor April Turnbull ("Debtor"). Dkt. 64. The Debtor's ex-husband, Lawrence L. Escobedo, Jr. ("Mr. Escobedo"), filed a pro se objection (which the court treats as an opposition). Dkt. 73. No reply was filed.

The court has reviewed the motion, objection, and all related declarations and exhibits. The court takes judicial notice of the docket in this Chapter 13 case. The court has also determined that oral argument will not assist in the resolution of the motion and therefore issues this ruling as a Final Ruling. *See* Local Bankr. R. 9014-1(h).

Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

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

Background

The parties' dispute concerns nature and ownership of unknown funds in an unanticipated check from Wells Fargo Auto in the amount of $14,144.41. Apparently not knowing what else to do with the check, Wells Fargo sent or intended to send it to the Chapter 13 Trustee ("Trustee"). The check is made payable to the Debtor and Mr. Escobedo.

The Debtor wants the entire check. She wants the Trustee to disburse the funds solely to her through her plan, which is currently in default. The Debtor contends that she is the sole owner of the funds because they arise from separate property used to purchase a 1999 Cadillac Escalade ("Escalade"), and the division of all martial assets was completed in the parties' recent divorce. The Debtor therefore contends the funds are her separate property.

Mr. Escobedo, on the other hand, states that he and the Debtor purchased the Escalade as a married couple in July of 2006, and the Escalade was surrendered back to the dealer in June 2008. Mr. Escobedo also notes that during the couple's divorce the state court indicated that "there are no assets or debts subject to division by the Court." Mr. Escobedo construes this to mean the that the state court made no determination regarding the Escalade, and thence the funds, in its judgment of divorce. He asserts that no assets or debts were awarded to either party and therefore the Debtor's claim that these funds are her sole and separate property is incorrect. Mr. Escobedo asserts that the funds are (and remain) community property and he wants his one-half.

The court notes that the account from which the funds originate appears to be in both the Debtor's and Mr. Escobedo's name.

Discussion

The dispute between the Debtor and Mr. Escobedo concerns the characterization of, and the validity and extent of the parties' respective interest(s) in, the Wells Fargo funds. That dispute must be resolved by an adversary proceeding. *See* Fed. R. Bankr. P. 7001(2) ("The following are adversary proceedings: . . . a proceeding to determine the validity, . . . or extent of a[n] . . . interest in property[.]"); *see also Aftandilian v. Prestige Management Group, LLC (In re Aftandilian)*, 2014 WL 1244789, *5 (9th Cir. BAP 2014) ("Under Rule 7001(2), an action to determine the validity of a party's interest in property must be pursued as an adversary proceeding."). The Debtor's motion is therefore procedurally improper. *GMAC Mortg. Corp. v. Salisbury (In re Loloee)*, 241 B.R. 655, 660 (9th Cir. BAP 1999) ("A motion procedure cannot be used

to circumvent the requirement of an adversary proceeding.").

And because it is procedurally improper, the Debtor's motion will be denied without prejudice. *Aftandilian*, 2014 WL 1244789 at *5 (presenting matter that must be commenced as adversary proceeding as motion is alone sufficient grounds for denial).

Denial of the motion is without prejudice to the commencement of an adversary proceeding by either party. Alternatively, upon request by either party, the court will modify the automatic stay of § 362(a) to allow the state court to determine the nature of the funds, and if appropriate divide the funds according to the parties' respective interests, as an asset of the marital estate. Of course, the parties may choose to avoid litigation costs which would substantially diminish or may even deplete the funds and stipulate that each will receive one-half.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

29. 19-23948-B-13 CYB-1 **Thru #31**

C TODD/SANDRA SMITH
Candace Y. Brooks

MOTION TO VALUE COLLATERAL OF PLATINUM RAPID FUNDING GROUP LTD.
8-19-19 [23]

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 Platinum Rapid Funding Group Ltd. at $4,900.00.

Debtors' motion to value the secured claim of Platinum Rapid Funding Group Ltd. ("Creditor") is accompanied by the Declaration of C. Todd Smith. Debtor and Creditor entered into two separate loan agreements: the first on February 21, 2019, for approximately $11,025.00 and the second on April 17, 2019, for approximately $33,350.00. Debtor contends that the balance owed on the first loan is $4,900.00. Creditor filed a UCC Financing Statement on June 13, 2019, purportedly perfecting its security interest in Debtor's inventory, chattel, paper, accounts, equipment, and general intangible.

Debtor is the owner of business tools, equipment, and account receivables related to his handyman business Smith Consulting. Debtor seeks to value the business tools and equipment at a replacement value of $2,875.00 and the account receivables at $5,090.04 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the assets' 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. 7-1 filed by Platinum Rapid Funding Group, Ltd. is the claim which may be the subject of the present motion. The proof of claim appears to apply for both the first and second loans.

Discussion

With regard to business tools and equipment that a debtor chooses to retain in bankruptcy, the appropriate method of valuation is "the price which a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller." *In re Tapang*, 2015 Bankr. LEXIS 1349, at *36 (Bankr. N.D. Cal. 2015), *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953, 960 (1997).

The Debtor values his business tools and equipment at $2,875.00. Dkt. 1, pp. 19-20. The Smith Declaration states that the collateral has been used in Debtor's handyman business for the past 12 years. Debtor states that he is familiar with the collateral and that it is well used and in fair condition. Debtor states that the price he would pay for like tools and equipment from a willing seller is $2,875.00.

With regard to the account receivables, Debtor asserts that the total account receivables for his business is $5,090.04.

Combining the value of the business tools, equipment, and account receivables, the Debtors believe that the total secured value of Creditor's collateral is $7,956.04. Since the balance owed on the first loan is $4,900.00, this amount is entirely secured. The Creditor's secured claim is determined to be in the amount of $4,900.00. *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.

30. 19-23948-B-13 CYB-2 — C TODD/SANDRA SMITH — Candace Y. Brooks — MOTION TO VALUE COLLATERAL OF PLATINUM RAPID FUNDING GROUP LTD. — 8-19-19 [28]

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 Platinum Rapid Funding Group Ltd. at $3,065.04.

Debtors' motion to value the secured claim of Platinum Rapid Funding Group Ltd. ("Creditor") is accompanied by the Declaration of C. Todd Smith. Debtor and Creditor entered into two separate loan agreements: the first on February 21, 2019, for approximately $11,025.00 and the second on April 17, 2019, for approximately $33,350.00. Debtor contends that the balance owed on the second loan is $27,196.00. Creditor filed a UCC Financing Statement on June 13, 2019, purportedly perfecting its security interest in Debtor's inventory, chattel, paper, accounts, equipment, and general intangible.

Debtor is the owner of business tools, equipment, and account receivables related to his handyman business Smith Consulting. Debtor seeks to value the business tools and equipment at a replacement value of $2,875.00 and the account receivables at $5,090.04 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the assets' 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. 7-1 filed by Platinum Rapid Funding Group, Ltd. is the claim which may be the subject of the present motion. The proof of claim appears to apply for both the first and second loans.

Discussion

With regard to business tools and equipment that a debtor chooses to retain in bankruptcy, the appropriate method of valuation is "the price which a willing buyer in the debtor's trade, business, or situation would pay to obtain like property from a willing seller." *In re Tapang*, 2015 Bankr. LEXIS 1349, at *36 (Bankr. N.D. Cal. 2015), *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953, 960 (1997).

The Debtor values his business tools and equipment at $2,875.00. Dkt. 1, pp. 19-20. The Smith Declaration states that the collateral has been used in Debtor's handyman business for the past 12 years. Debtor states that he is familiar with the collateral and that it is well used and in fair condition. Debtor states that the price he would pay for like tools and equipment from a willing seller is $2,875.00.

With regard to the account receivables, Debtor asserts that the total account receivables for his business is $5,090.04.

Combining the value of the business tools, equipment, and account receivables, the Debtors believe that the total secured value of Creditor's collateral is $7,956.04. Since the balance owed on the first loan is $27,196.00, the Creditor's claim is under-collateralized. The Creditor's secured claim is determined to be in the amount of $3,065.04. *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.

31.	19-23948-B-13 JPJ-1	C TODD/SANDRA SMITH Candace Y. Brooks	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-31-19 [18]

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

The Chapter 13 Trustee objects to confirmation on grounds that feasibility depends on granting a motion to avoid lien held by Platinum Rapid Funding (Schedule D, creditor 2.4) and a motion to avoid lien held by Platinum Rapid Funding (Schedule D, creditor 2.3). Although motions to avoid lien were not filed, the Debtors filed motions to value the collateral of Platinum Rapid Funding. Those motions are granted at Items #29 (DCN. CYB-1) and #30 (DCN. CYB-2). The Trustee's issues are therefore resolved.

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 June 21, 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 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.

32. 19-23949-B-13 JPJ-1 — ERIC/REGINA FLEMING, Ulric N. Duverney — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 8-6-19 [14]

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.

The Chapter 13 Trustee objects to confirmation on grounds that Debtor Eric Fleming did not appear at the first meeting of creditors, Debtors are delinquent in plan payments, Debtors failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, and Debtors used the wrong exemptions to exempt their real property and locksmith tools.

Debtors respond stating that the meeting of creditors as to Debtor Eric Fleming will be continued to September 5, 2019, that they made their plan payment which cleared on August 8, 2019, that the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys was filed on August 6, 2019, and that they filed amended Schedule C on August 6, 2019, to correct the exemptions. Debtors also state that they will file amended schedules and an amended plan due to Joint Debtor Regina Fleming's recent retirement.

Because the Debtors state that they will file an amended plan, the plan filed June 21, 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.

33. 19-23852-B-13 SVETLANA TISKIY
JPJ-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-2-19 [24]

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 overrule the objection.

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

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

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on August 20, 2019. The Trustee's objection is overruled.

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

The court will enter a minute order.

34. 19-23553-B-13 JGD-3 | SHAWN/HEATHER WHITNEY
John G. Downing | MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 11
8-12-19 [55]

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 convert this Chapter 13 case to a Chapter 11 proceeding.

This motion has been filed by Shawn Whitney and Heather Whitney ("Debtors") to convert this case from one under Chapter 13 to one under Chapter 11. Pursuant to 11 U.S.C. § 1307(d), at any time before confirmation of a plan and after notice and a hearing, the court may convert a Chapter 13 case to a Chapter 11 case. Here, Debtor complies with the requirements of 11 U.S.C. § 109(d) and, there being no opposition, the court will convert the case to Chapter 11.

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

The court will enter a minute order.

35. 19-22559-B-13 CYB-1 — BRENDA MURPHY — Candace Y. Brooks — MOTION TO CONFIRM PLAN 7-19-19 [22]

No Ruling

36. 19-23859-B-13 JPJ-1 **Thru #37**
DANA/ANTHONY CRANDELL
Michael O'Dowd Hays
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-14-19 [23]

Final Ruling

The case having been dismissed on August 22, 2019, the objection to confirmation is overruled as moot.

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

The court will enter a minute order.

37. 19-23859-B-13 KRR-1
DANA/ANTHONY CRANDELL
Michael O'Dowd Hays
OBJECTION TO CONFIRMATION OF PLAN BY GAVIN CLEARY AND CHARLES KIPER AND/OR MOTION TO DISMISS CASE
8-6-19 [20]

Final Ruling

The case having been dismissed on August 22, 2019, the objection to confirmation is overruled as moot and the motion to dismiss case is denied as moot.

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

The court will enter a minute order.

38.	19-23960-B-13 JPJ-1	TODD BISHOP Bruce Charles Dwiggins	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-14-19 [22]

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) Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Although there are no other objections to confirmation as to the plan filed June 23, 2019, it will not be confirmed since the Debtor filed an amended plan on August 12, 2019. The confirmation hearing for the amended plan is set for September 17, 2019.

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

The court will enter a minute order.

39. 19-21764-B-13 SHEMILA JOHNSON
MMP-1 Michele M. Poteracke

MOTION TO CONFIRM PLAN
7-27-19 [38]

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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan 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 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.

40. 19-23672-B-13 JPJ-2 SUNSHINE COAKER
Helga A. White

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-2-19 [26]

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 use of California Code of Civil Procedure § 704.730 to claim an interest in real property located at 10333 Tasha Road, Nevada City, California since this property was not the Debtor's primary address on the date the petition was filed. The relevant date for determining the status of a homestead exemption is the date of the filing of the petition. *Cisneros v. Kim (In re Kim)*, 2527 B.R. 680 (BAP 9th Circ. 2000). The Debtor testified at the first meeting of creditors held July 25, 2019, that she did not reside in the property on the date of the petition.

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

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

The court will enter a minute order.

41. 19-24273-B-13 CHRISTINE CROWNOVER
JPJ-1 Catherine King

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-14-19 [15]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed July 6, 2019, will be confirmed.

The objection 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 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.

42. 18-25775-B-13 ELIZABETH ANDRADE
CYB-2 Candace Y. Brooks

MOTION TO MODIFY PLAN
7-29-19 [43]

No Ruling

43.	19-23975-B-13 JPJ-1	LISA BRANNAN Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-6-19 [18]

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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on August 12, 2019. The confirmation hearing for the amended plan has not been scheduled however. Nonetheless, the earlier plan filed July 1, 2019, is not confirmed.

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

The court will enter a minute order.

44. 19-23876-B-13 TRACILEA YOUNG
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-6-19 [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 August 1, 2019, at 9:00 a.m., as required pursuant to 11 U.S.C. § 343. Instead, the Debtor and her attorney appeared at 10:00 a.m. since they thought that the meeting was taking place at 10:00 a.m. Although one creditor asked the Debtor a few questions, the Debtor has not been thoroughly examined under oath.

Second, the Debtor does not have funds to pay the proposed plan payments. Debtor's monthly income on Schedule J, Line 23C is listed as $-3,081.07. The proposed plan payments are $150.00 for 60 months. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Therefore, the Debtor's attorney must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Fourth, because the Debtor did not appear at the 9:00 a.m. meeting of creditors, the Trustee was unable to clarify why Debtor's Statement of Financial Affairs for Individuals Filing for Bankruptcy states $0.00 income and her 2018 federal tax return states $18,462.00. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed July 3, 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.

45. 19-20077-B-13 JOHN JAMES
PGM-4 Peter G. Macaluso
Add on #63

MOTION TO APPROVE LOAN MODIFICATION
8-5-19 [67]

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 permit the permanent loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification of $1,323.75 per month at 4.000%. The new principal balance that will be due and payable is $48,971.53. This permanent loan modification follows the Debtor's successful completion of his trial modification payments. The permanent loan modification will assist the Debtor in being able to make current loan payments and to keep his real property.

The motion is supported by the Declaration of John C. James. The Declaration affirms Debtor's desire to obtain the post-petition financing and states that the modification will not affect the distribution to unsecured creditors who will be paid 100% under the terms of the confirmed plan.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

46. 15-23679-B-13 ABDUL MIXON MOTION TO OBTAIN CREDIT
MET-1 Mary Ellen Terranella 8-14-19 [30]

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 permit the Debtor to obtain credit.

Debtor seeks court approval to incur post-petition credit as co-signer to refinance the mortgage on his parents' property. Freedom Mortgage ("Creditor") has agreed to a loan modification that will reduce Debtor's parents' mortgage payment from the current $3,809.00 a month to $2,624.68 a month. Debtor's parents are elderly and on fixed incomes of pensions and Social Security totaling $8,129.95 and can afford the reduced payment. The refinance will allow the Debtor's parents to pay off a solar panel loan through California First Program, which is paid to the Solano County Tax Assessor. Debtor asserts that the annual tax payment to the County has been very expensive for his parents. Because the loan is a Federal Housing Administration loan, the lender is requiring Debtor's parents to have a co-signor so that the back-end ratio is acceptable for the FHA loan.

The motion is supported by the Declaration of Mark Brashley. The Declaration affirms the Debtor's desire to be listed as a co-signor. Debtor states that he will not be making any payments on the loan since his parents have stable pensions and Social Security income. Debtor also states that he is current on his plan payments, in month 51 of a 60-month plan, and is paying 100% to general unsecured creditors.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's 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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

47. 19-23780-B-13 CAS-1 **Thru #50**
PATRICIA KOKASON
Peter L. Cianchetta
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
7-24-19 [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). No written reply has been filed to the objection.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #48 (DCN JPJ-1).

Feasibility depends on the granting of a motion to value collateral of Capital One Auto Finance. That motion is heard at Item #50 (DCN PLC-2), was properly served on Capital One Auto Finance at the address were notices should be sent per Claim No. 3, and the creditor did not file any objection to the motion. Therefore, the motion was granted, which renders this objection to confirmation overruled as moot.

Nonetheless, the plan filed June 14, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #48 (DCN JPJ-1). The objection is overruled but the plan is not confirmed.

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

The court will enter a minute order.

48. 19-23780-B-13 JPJ-1
PATRICIA KOKASON
Peter L. Cianchetta
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-31-19 [18]

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 plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is $2,969.00 and the Debtor must pay no less than $178,140.00 to unsecured non-priority creditors. The plan proposes 0% dividend to unsecured non-priority creditors.

Second, the terms for payment of the Debtor's attorney's fees are unclear. Section 3.06 of the plan fails to specify a monthly payment for administrative expenses.

Third, the plan will take approximately 66 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the Debtor has failed to amend Questions 5 (disclosing an IRA distribution) and 16 (disclosing the pre-petition payment made to her attorney) on the Statement of Financial Affairs as requested by the Trustee at the first meeting of creditors. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed June 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 enter a minute order.

49.	19-23780-B-13 PLC-1	PATRICIA KOKASON Peter L. Cianchetta	MOTION TO VALUE COLLATERAL OF INFINITI FINANCIAL SERVICES 8-2-19 [24]

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 Infiniti Financial Services at $8,879.00.

Debtor's motion to value the secured claim of Infiniti Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Infiniti G37 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,879.00 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. 6-1 filed by Infiniti Financial Services 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 March 26, 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 $11,146.46. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $8,879.00. *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.

50.	19-23780-B-13 PLC-2	PATRICIA KOKASON Peter L. Cianchetta	MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 8-2-19 [29]

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 Capital One Auto Finance at $5,584.00.

Debtor's motion to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,584.00 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. 4-1 filed by Capital One Auto Finance, a division of Capital One, N.A. 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 September 2, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,532.09. 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 $5,584.00. *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.

51. 19-23982-B-13 AP-1 **Thru #52**

PEGGY SOMKOPULOS
Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
8-8-19 [34]

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 Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $72,538.68 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed July 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.-1.

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

The court will enter a minute order.

52. 19-23982-B-13 JPJ-1

PEGGY SOMKOPULOS
Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-6-19 [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 court's decision is to overrule the objection, conditionally deny the motion to dismiss, and not confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that the plan cannot be assessed for feasibility since the Debtor has not filed an amended Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys as requested by the Trustee to reflect the correct amount of attorney's fees paid prior to the filing of the petition. The Debtor did, however, file an amended Statement of Financial Affairs, that states at Part 7, Para. 16, that Debtor paid $500.00 to Wolff & Wolff for consultation about seeking bankruptcy or preparing a bankruptcy petition.

Additionally, feasibility depends on the value of collateral for Select Portfolio Servicing. On August 20, 2019, the court entered an order setting an evidentiary hearing on the matter to be heard October 21, 2019, at 9:30 a.m. *See* dkt. 41.

Although the value of Select Portfolio Servicing's collateral is still at issue and an amended Statement of Financial Affairs was filed which may resolve the Trustee's objection, the plan is nonetheless not confirmed for reasons stated at Item #51 (DCN AP-1). Therefore, the plan filed July 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, 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 OVERRULED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

53. 19-24187-B-13 JOSEPH/MARYLOU LUTISAN
JHW-1 Mark A. Wolff
Thru #54

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY LLC
7-30-19 [18]

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.

Ford Motor Credit Company LLC ("Creditor") objects to confirmation on grounds that the proposed plan does not provide for the present value of Creditor's secured claim, a 2016 Ford Mustang, because it fails to use the proper formula rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004). Creditor states that the interest rate as of July 23, 2019, was 5.50% and this should be adjusted two percentages upward for the high risk of default by the Debtors and the vehicle's depreciating value.

Discussion

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., August 29, 2019, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.25%. Here, the plan proposes a 4.5% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

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

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

The court finds that the appropriate interest rate should be about 1.5% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the Creditor that would warrant its entitlement to 7.50%. Accordingly, a rate of 6.75% suffices. The court sustains the objection as to increasing the interest rate but overrules the objection as to setting the interest rate at 7.50%.

The plan filed July 1, 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.

54.	19-24187-B-13 JPJ-1	JOSEPH/MARYLOU LUTISAN Mark A. Wolff	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-6-19 [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). No written reply has been filed to the objection.

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

Feasibility depends on the granting of a motion to value collateral for Ford Credit. The Debtors have not filed, set for hearing, and served the respondent creditor and Trustee with a motion to value the collateral pursuant to Local Bankr. R. 3015-1(I).

Although the Trustee also objected to confirmation of the plan for Debtors' use of both 703 and 704 for exemptions, the Debtors filed an amended Schedule C on August 6, 2019, correcting the claimed exemptions.[1]

Because the Debtors have not filed a motion to value collateral for Ford Credit, the plan filed July 1, 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.

[1]The court notes that on August 8, 2019, the Trustee filed a Notice of Withdrawal to its Objection to Debtor's Claim of Exemption. That matter is scheduled to be heard September 10, 2019, at 1:00 p.m.

55. 19-23988-B-13 MICHAEL MULLINS
JPJ-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-6-19 [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 Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,740.00, which represents approximately 1 plan payment. An additional payment of $2,740.00 will be due by the date of the hearing on this matter. 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).

Second, the Debtor has failed to provide the Trustee with requested copies of certain items related to Debtor's business Simply Southern Café including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, and proof of all required licenses or permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Third, feasibility depends on the granting of a motion to value collateral for Santander Consumer. The Debtor has not filed, set for hearing, and served the respondent creditor and Trustee with a motion to value the collateral pursuant to Local Bankr. R. 3015-1(I).

The plan filed June 24, 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.

56. 19-22994-B-13 KATHERINE REINECK MOTION TO CONFIRM PLAN
JMC 3 Joseph M. Canning 7-26-19 [23]

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 Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan 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 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.

57. 19-23995-B-13 MANUEL/ALMA PEREZ
JPJ-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
8-6-19 [18]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed June 25, 2019, will be confirmed.

The objection is 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.

58. 19-22396-B-13 RUMMY SANDHU
JPJ-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-22-19 [20]

Tentative Ruling

This matter was continued from August 6, 2019, to provide the Debtor additional time to cure delinquency in plan payments. The issue regarding feasibility depending on the granting of motions to avoid lien held by American Express and Capital One Bank (USA), N.A. were resolved on August 6, 2019.

The matter will be determined at the scheduled hearing.

59. 19-23998-B-13 TANIKA FREEMAN
JPJ-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-6-19 [16]

CONTINUED TO 9/17/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/12/19.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

60. 18-26899-B-13 NORA GONZALEZ MOTION TO MODIFY PLAN
SLE-1 Steele Lanphier 7-22-19 [27]

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.

61. 19-22099-B-13 **Thru #62** | ELDRIDGE JACKSON
Lucas B. Garcia | ORDER TO SHOW CAUSE
8-16-19 [107]

No Ruling

62. 19-22099-B-13
LBG-3 | ELDRIDGE JACKSON
Lucas B. Garcia | MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
8-13-19 [98]

Final Ruling

The motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, there appears to be insufficient service of process on Santander Consumer USA. The address used by the Debtor does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will enter a minute order.

63. 19-20077-B-13 JOHN JAMES
PGM-2 Peter G. Macaluso
See Also #45

CONTINUED MOTION TO MODIFY PLAN
5-20-19 [43]

No Ruling