UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 16, 2015 at 10:00 a.m.

1.	15-22534-B-7 15-2115	PHILIP/SHANNON ROBERTS BARTH V. ROBERTS	CONTINUED STATUS CONFERENCE RE: COMPLAINT 6-5-15 [1]

2. 15-24602-B-13 RAFAEL/MARGARITA GUTIERREZ
ELG-1 Julius M. Engel
Thru #3

MOTION TO CONFIRM PLAN
7-31-15 [24]

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

The court's decision is to not confirm the amended plan filed July 31, 2015.

The plan will take approximately 68 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The over-extension of the plan is caused by timely filed general unsecured proofs of claim that were not previously scheduled.

In response, the Debtors assert that the plan should have indicated that 0% will be paid to unsecured creditors due to Debtors' negative disposable income. In lieu of filing an amended plan correcting the amount paid to unsecured creditors as 0%, Debtors request to make this change in the confirmation order. Debtors' request to correct these defects in the confirmation order is denied. The court will not allow the Debtors to use the confirmation order to effectively re-write an otherwise defective plan and to reduce payments to unsecured creditors to 0% without proper notice. Debtors shall file an appropriate amended plan and set it for hearing within the parameters of Item #3. Specifically, if Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

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

3. 15-24602-B-13 RAFAEL/MARGARITA GUTIERREZ
ELG-1 Julius M. Engel

COUNTER MOTION TO DISMISS CASE
9-1-15 [33]

Tentative Ruling: The motion will be conditionally denied.

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

4. 15-24907-B-13 YVONNE SILVEIRA MOTION TO CONFIRM PLAN
SJS-1 Scott J. Sagaria 8-3-15 [20]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 3, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

5.	15-26307-B-13 SS-1	ANTONIO BROWN AND LAKIYA LOWE-BROWN Scott D. Shumaker	MOTION TO VALUE COLLATERAL OF LINCOLN FINANCE 9-2-15 [20]

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

The court's decision is to deny without prejudice the motion to value the secured claim of Lincoln Finance.

The motion filed by Debtors to value the secured claim of Lincoln Finance ("Creditor") is accompanied by Joint Debtor's declaration. Debtors are the owners of a 2002 Ford Explorer ("Vehicle"). According to the Debtors' motion, the Debtors seek to value the Vehicle at a replacement value of $3,800.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the court finds issue with the Debtors' valuation. First, the motion states that the valuation of the Vehicle is $3,800.00 but the Kelly Blue Book printout submitted as an exhibit does not indicate this valuation anywhere. Second, the motion states that the $3,800.00 valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

6. 10-43909-B-13 BILLY/CAROLYN WREN MOTION TO INCUR DEBT
MET-2 Mary Ellen Terranella 8-29-15 [49]

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

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

Debtors seek court approval to incur post-petition credit with Quicken Loan, Inc. ("Creditor") to refinance the mortgage loan on their residence located at 2705 Vista Palomar, Fairfield, California ("Property"). Creditor has agreed to a loan modification which will reduce Debtors' mortgage payment by $539.79. Debtors' principal, interest, and monthly escrow payment will be $1,743.59.

This post-petition financing is not consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. The motion complies with the provisions of 11 U.S.C. § 364(d) and is therefore granted.

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

7. 14-30113-B-13 CHRISTIAN SANDERS MOTION TO MODIFY PLAN
MG-1 Matthew J. Gilbert 8-3-15 [20]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The Motion to Confirm 1st Amended Chapter 13 Plan Filed on August 3, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 3, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

8. 15-23914-B-13 MICHAEL/SUSANNA ADEMA MOTION TO CONFIRM PLAN
TJW-1 Timothy J. Walsh 8-5-15 [25]

Tentative Ruling: The Motion for Order to Confirm First Amended Chapter 13 Plan Filed August 5, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that the order properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $2,924.00 to the Trustee through August 2015. Commencing September 25, 2015, monthly plan payments shall be $1,100.00 for the remainder of the plan.

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

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

9. 10-49217-B-13 ELNORA DELEON FLORES MOTION TO MODIFY PLAN
MWB-3 Mark W. Briden 7-15-15 [85]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 15, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

10. 15-25417-B-13 GERALD FILICE — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 — Pro Se — 8-26-15 [25]
Thru #11

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

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

First, the Debtor is delinquent to the Trustee in the amount of $500.00, which represents the first plan payment that was due August 25, 2015. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Third, the Debtor has not provided the Trustee with documentation to determine if Debtor's business is solvent and necessary for reorganization. This documentation includes, but is 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, proof of all required insurance, and proof of licenses or permits. The Debtor has not complied with 11 U.S.C. § 521.

Fourth, although the Debtor filed Schedule I, the Debtor did not utilize the mandatory Official Bankruptcy Forms 6I effective December 1, 2013.

Fifth, the plan payment in the amount of $500.00 does not equal the aggregate of the Trustee's fees and monthly dividend payable on account of Class 2 secured claim. The aggregate of the monthly amounts plus the Trustee's fee is $1,490.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Sixth, the amount owed and monthly dividend to Class 2A creditors, Internal Revenue Service and Franchise Tax Board, is listed as "UNK" and the estate cannot be effectively administered.

Seventh, the claim of Selene Finance is mis-classified as a Class 2A claim when it should. The proper classification is Class 1 since the Debtor testified at the Meeting of Creditors held on August 20, 2015, that this creditor holds a deed of trust against Debtor's residence and was in arrears when the bankruptcy was filed.

Eighth, the claim of RPM Lender is mis-classified as a Class 4 claim. The proper classification would be Class 2 since the claim would not mature after the completion of the plan. The Debtor testified at the Meeting of Creditors held on August 20, 2015, that these is a balance of only $2,800.00 left to pay this creditor in full. With the payment amount listed in the plan as $400.00, it would take only approximately 7 months to pay the creditor's claim in full.

Ninth, the plan does not provide treatment for the priority claim filed by Internal Revenue Service. The plan does not comply with 11 U.S.C. § 1322(a)(2). The Debtor proposes a plan payment in the amount of $500.00 but has a monthly net income of $0 as provided in Schedule J filed July 21, 2015. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Tenth, the plan 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).

Eleventh, the Debtor lists the Internal Revenue Service with an unknown amount in Schedules D and E filed July 21, 2015. However, the IRS filed an amended claim on September 9, 2015, listing $360,075.41 as a secured lien. Additionally, the IRS' claim states that tax returns have not been filed since 2011. Since these circumstances relate directly to the Debtor's financial affairs, the Debtor should have known or made the effort to obtain this information so that the Schedules filed would reflect accurate information. It does not appear that the plan was proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3).

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

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

11.	15-25417-B-13 USA-1	GERALD FILICE Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY UNITED STATES 8-27-15 [33]

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

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

First, the plan does not provide treatment for the priority claim filed by Internal Revenue Service ("IRS") despite the Debtor being aware that the IRS has liens filed and attached to his personal and real property. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Second, the Debtor's plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). The plan provides for payment of only $500.00 per month when the IRS's claim alone would require about $1,004.00 per month, including 3% interest compounded daily. The plan also does not provide for the payment of current taxes.

Third, it does not appear that the plan was proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Debtor has a history of bankruptcies and tax avoidance. Debtor should know the requirements of bankruptcy and tax since he is educated in the law and formerly practiced as an attorney in California. The Debtor's Schedules do not accurately reflect his financial situation.

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

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

12. 15-25118-B-13 CYNTHIA BROWN
DPB-1 Douglas P. Broomell
Thru #13

MOTION TO CONFIRM PLAN
7-30-15 [32]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

13. 15-25118-B-13 CYNTHIA BROWN
RK-1 Douglas P. Broomell

MOTION TO DISMISS CASE AND/OR REQUEST FOR JUDICIAL NOTICE
8-14-15 [37]

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

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

Creditor Gregory T. Flahive ("Flahive"), the Debtor's ex-spouse, moves to dismiss this Chapter 13 case under 11 U.S.C. § 1324(b). Section 1324(b) requires a confirmation hearing to be held within 45-days after the § 341 meeting of creditors. The § 341 meeting of creditors in this case was held (and concluded) on July 23, 2015. Forty-five days after that date was September 6, 2015, or, because that date was a Sunday, September 7, 2015.

Flahive maintains that the first confirmation hearing in this case is the hearing on the Debtor's first modified plan set for September 16, 2015, which is more than 45 days after the § 341 meeting of creditors. Flahive contends that the first modified plan filed on July 30, 2015, was a de facto withdrawal of the original plan filed with the petition on June 25, 2015, which rendered the confirmation hearing set for the original plan on August 19, 2015, a nullity. Flahive's motion lacks merit and will be denied.

A pre-confirmation modified plan replaces a prior plan and becomes the operative plan. *See* 11 U.S.C. § 1323(b); *Nielsen v. DLC Investment, Inc. (In re Nielsen)*, 211 B.R. 19, 23 (8th Cir. BAP 1997). However, while the terms of a modified plan become the operative terms in the case, a modified plan does not alter obligations under the prior plan being modified that have already accrued. *In re Walters*, 223 B.R. 710, 713 (Bankr. W.D. Mo. 1998); *In re Reyes*, 482 B.R. 603, 609-610 (D. Ariz 2012). In simpler terms, a modified plan alters existing plan terms not existing plan obligations.

The August 19, 2015, confirmation hearing set in this case was an accrued plan obligation, not a plan term. When the original plan in this case was filed with the petition the clerk's office set a confirmation hearing in the *Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines*. If no objection was filed, the original plan could have been confirmed without an actual hearing. *See* LBR 3015-1(c)(4). However, since an objection was filed a confirmation hearing on the original plan became mandatory. *Id.* Thus, the August 19, 2015, confirmation hearing

became a plan obligation.[1] And since the objection (filed at 11:12:52 on July 30, 2015 [Dkt. 28]) was filed before the modified plan (filed at 12:14:33 p.m. on July 30, 2015 [Dkt. 34]) the confirmation hearing became an "accrued" obligation under the original plan. Thus, while the modified plan may have changed the terms of the original plan and become the operative plan terms in this case, it did not nullify or otherwise vacate the August 19, 2015, confirmation hearing.

Therefore, based on the foregoing, a mandatory hearing as a plan obligation under the original plan filed on June 25, 2015, having been held on August 19, 2015, and that hearing having resulted in an order denying confirmation of the original plan, the court concludes that a confirmation hearing was held within 45 days of the § 341 meeting of creditors as required by § 1324(b). Accordingly, Flahive's motion to dismiss this Chapter 13 case is denied with prejudice.

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

[1] Moreover, once that hearing became mandatory, it could only be vacated by subsequent court order. *See* LBR 9014-1(j). Obviously, this first modified plan is not a court order.

14. 10-34421-B-13 RICHARD CRUDO — MOTION TO WAIVE 1328 REQUIREMENT
PGM-2 Peter G. Macaluso — 8-17-15 [80]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The Motion to Waive Debtor, Richard K. Crudo's 11 U.S.C. § 1328 Requirement has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

The Debtor passed away on November 30, 2010. Prior to his death, the Debtor filed a certification of completion of a post-petition course on personal financial management. Plan payments were also completed through Veronica Crudo, the Debtor's successor in interest, and the Chapter 13 Trustee has filed a notice of completed plan payments on July 9, 2015 (Dkt. 78). However, the Debtor is unable able to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

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

15. 14-30622-B-13 PATRICK SALIMI — OBJECTION TO CLAIM OF CAVALRY SPC I, LLC, CLAIM NUMBER 1
JPJ-3 Peter G. Macaluso — 7-17-15 [96]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

The court's decision is to sustain the objection to Claim Number 1 of Cavalry SPV I, LLC and disallow the claim in its entirety.

Jan Johnson ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Proof of Claim No. 1. The claim is asserted to be in the amount of $7,473.30. Objector asserts that the statement that was filed with the proof of claim did not include the date of the account holder's last transaction or the date of the last payment on the account as required pursuant to Fed. R. Civ. P. 3001(c)(3)(A).

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). It is settled law in the Ninth Circuit that 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 was not filed pursuant to the requirements of Fed. R. Civ. P. 3001(c)(3)(A) because the statement filed with the proof of claim did not include the date of the account holder's last transaction or the date of the last payment on the account. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

16. 15-22824-B-13 WILLIAM DOTY MOTION TO CONFIRM PLAN
RKB-1 R. Kenneth Bauer 7-10-15 [29]

DEBTOR DISMISSED: 08/27/2015

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The case having previously been dismissed, the Motion to Confirm Amended Chapter 13 Plan is dismissed as moot.

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

17. 13-20226-B-13 SHIRAZ ALI MOTION TO MODIFY PLAN
LBG-203 Lucas B. Garcia 7-17-15 [205]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The Motion to Confirm the 3rd Modified Plan Dated July 17, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 17, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

18.	15-24826-B-13 JPJ-1 **Thru #20**	CLIFFORD/KATHLEEN GIANNUZZI Mary Ellen Terranella	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 7-30-15 [28]

Tentative Ruling: The Trustee'S Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee has objected to confirmation of the Debtors' plan filed June 15, 2015, and moves for an order of dismissal if confirmation is denied (Dkt. 28). The Trustee raises two objections: (1) feasibility depends on the granting of motions to value the collateral of PNC Bank and Travis Federal Credit Union; and (2) Ocwen's secured claim is mis-classified in Class 4 and 2A and should be classified in Class 1. All matters were subsequently continued to September 16, 2015, in order to permit Travis Credit Union to obtain an appraisal of its collateral.

PNC Bank did not object to the valuation of its collateral and the Debtors' motion to value its collateral is granted for the reasons stated in Item #19 below. Travis Federal Credit Union subsequently withdrew its objection to the Debtor's motion to value its collateral and the Debtors' motion to value its collateral is granted for the reasons stated in Item #20 below. That leaves the Trustee's objection to the Debtors' classification of the Ocwen secured claim as the sole remaining objection to confirmation of the Debtors' plan. For the reasons explained below, the Trustee's objection is sustained and confirmation of the plan filed June 15, 2015, is denied without prejudice.

The parties' positions on the classification issue are as follows: the Debtors contend that they have the right to pay Ocwen directly and outside the plan whereas the Trustee argues that any right the Debtors have to pay a creditor outside the plan is not absolute and, in this case, Ocwen must be paid by the Trustee through the plan as a Class 1 claim. The Debtors rely on *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir. 2008). The Trustee does not generally dispute the proposition for which the Debtors cite *Lopez*. Rather, the Trustee maintains that *Lopez* is clarified and limited by *Giesbrecht v. Fitzgerald (In re Giesbrecht)*, 429 B.R. 682 (9th Cir. BAP 2010). The Trustee is correct.

Lopez recognizes that claims may be paid directly by a debtor outside a plan. *Giesbrecht*, however, clarifies that the right to do so is not absolute and, in fact, "bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines." *Giesbrecht*, 429 B.R. at 690. The court's local rules are relevant here.

Local Rule 3015-1(a)states as follows: "All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan." (Emphasis added). Thus, LR 3015-1(a) makes the use of the local standard Chapter 13 form plan mandatory. Section 2.08 of the mandatory Chapter 13 plan states that "Class 1 includes all delinquent secured claims that mature after completion of this plan." Section 2.08(b) further states that with respect to all Class 1 claims, the "trustee shall maintain all payments falling due after the filing of the case to the holder of each Class 1 claim."

Entirely consistent with the authority recognized in *Giesbrecht*, through its local rules the United States Bankruptcy Court for the Eastern District of California does not allow debtors to make direct payments to secured creditors outside a plan on long-term secured claims that are delinquent when a petition is filed. Instead, the court requires those claims to be classified as Class 1 claims to be paid by the Trustee through the plan. The Ocwen secured claim falls squarely within these parameters.

The Ocwen secured claim is a long-term debt secured by a first deed of trust on the Debtors' residence. The Debtors admit that the Ocwen secured claim was delinquent when their petition was filed. In fact, in the declaration filed in support of their opposition to the Trustee's objection, the Debtors admit that they intentionally withheld mortgage payments from Ocwen in an attempt to secure a loan modification.[1] Given these circumstances, the court's analysis need not proceed further. Under this court's local rules which require the mandatory use of the standard form Chapter 13 plan the Debtors cannot make mortgage payments directly to Ocwen outside the terms of a confirmed plan. Instead, delinquent when the petition was filed, the Ocwen secured claim must be classified as a Class 1 claim and must be paid by the Trustee through the plan.

Therefore, based on the foregoing, the Trustee's objection to confirmation of the Debtors' plan filed June 15, 2015, is sustained. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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[1] That attempt failed and this Chapter 13 case is "Plan B." Notably, the Debtors have not disclosed where the intentionally-withheld mortgage payments went or why they were not paid to Ocwen to bring the Ocwen loan current before the petition was filed. Nevertheless, even if the court's local rules and mandatory form Chapter 13 plan did not require the Debtors to classify the Ocwen secured claim as a Class 1 claim to be paid by Trustee through the plan, the unexplained disappearance and non-disclosure of intentionally-withheld mortgage payments shortly before the petition was filed would weigh heavily against the exercise of this court's discretion favorable to the Debtors.

19.	15-24826-B-13 MET-1	CLIFFORD/KATHLEEN GIANNUZZI Mary Ellen Terranella	CONTINUED MOTION TO VALUE COLLATERAL OF PNC BANK 6-29-15 [8]

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

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

The motion to value filed by Clifford Giannuzzi and Kathleen Giannuzzi ("Debtors") to value the secured claim of PNC Bank, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 3351 Mix Canyon Road, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $602,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on July 13, 2015, by PNC Bank, N.A. is the claim which may be the subject of the present motion.

Opposition

No opposition was filed.

Discussion

The first deed of trust secures a claim with a balance of approximately $619,976.00. Creditor's second deed of trust secures a claim with a balance of approximately $111,306.70 (Claims Registry, Claim No. 3). Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

20.	15-24826-B-13 MET-2	CLIFFORD/KATHLEEN GIANNUZZI Mary Ellen Terranella	CONTINUED MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION 6-29-15 [13]

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

The court's decision is to value the secured claim of Travis Credit Union at $0.00.

The motion to value filed by Clifford Giannuzzi and Kathleen Giannuzzi ("Debtors") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 3351 Mix Canyon Road, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $602,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on June 26, 2015, by Travis Credit Union is the claim which may be the subject of the present motion.

Opposition

Creditor filed a withdrawal of its opposition on August 31, 2015.

Discussion

The first deed of trust secures a claim with a balance of approximately $619,976.00. The second deed of trust secures a claim with a balance of approximately $111,306.70 (Claims Registry, Claim No. 3). Creditor's third deed of trust secures a claim with a balance of approximately $20,789.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

21. 15-26726-B-13 ARCILIN VALMONTE
KH-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-27-15 [7]

WELLS FARGO BANK, N.A. VS.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 248 Glenview Circle, Vallejo, California (the "Property"). Movant has provided the Declaration of Kevin A. Harris to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Harris Declaration states that the Movant purchased the Property at a trustee's sale. Title to the premises was recorded on April 29, 2015 (Dkt. 12). Additionally, Movant obtained a judgment for possession of the Property and a writ of possession of the Property (Dkts. 13 and 14) on August 20, 2015. This case was filed on August 26, 2015. Thus, the Debtor has no possessory interest in the Property.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that the Debtor has no interest in the Property and the Property is not necessary to an effective reorganization pursuant to 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

No other or additional relief is granted by the court.

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

22. 15-25730-B-13 JEFFREY/KELLY ERCOLINI
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-25-15 [18]

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

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

The Debtors' attorney of record was not present at the 341 meeting of creditors held on August 20, 2015, and thus a thorough examination of the Debtors could not be conducted as required pursuant to 11 U.S.C. § 343.

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

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

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

23. 15-24131-B-13 ANGELA FERREIRA MOTION TO CONFIRM PLAN
MRL-1 Mikalah R. Liviakis 8-4-15 [23]

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

The court's decision is to not confirm the amended plan filed August 4, 2015.

The Debtor is delinquent to the Trustee in the amount of $1,685.44, which represents approximately 1 plan payment. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

24.	15-25534-B-13 JPJ-1	LAWRENCE/KAPRICE CRAWFORD Julius M. Engel	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-25-15 [24]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

There being no objection to confirmation, the plan filed July 22, 2015, will be confirmed.

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

25. 15-25535-B-13 JORGE/MARTHA HERNANDEZ
JPJ-1 Kristy A. Hernandez

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-25-15 [23]

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

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

Feasibility of the plan depends on the granting of a motion to value collateral for American Honda Finance. The motion to value the collateral was heard on September 9, 2015, and denied with prejudice since the purchase money claim secured by the 2014 Honda Pilot was incurred within 910 days of the filing of the case. The Debtors must pay the claim without application of 11 U.S.C. § 506(a).

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

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

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

26. 15-24736-B-13 JOSHUA/MARILYN JOHNSON ORDER TO SHOW CAUSE
Julius M. Engel 8-20-15 [42]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Debtors' attorney, Julius M. Engel, shall show cause why compensation received from Debtors does not exceed the reasonable value of services provided.

The matter will be determined at the scheduled hearing.

27. 15-25538-B-13 MICHAEL VIVES
BF-5 Thomas L. Amberg

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
8-25-15 [16]

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

The court's decision is to continue the objection to confirmation of plan to September 23, 2015, at 10:00 a.m.

Bank of America, N.A. ("Creditor") holds a deed of trust secured by the Debtor's residence as indicated in the Debtor's petition filed July 11, 2015. Creditor has not yet filed a proof of claim but asserts that it is owed $1,671.83 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Creditor also objects on the basis that its claim is improperly classified in the plan. Creditor's claim is currently classified as a Class 4 claim. Creditor maintains that it claim should be classified as a Class 1 claim because the Debtor was delinquent on this long-term secured mortgage debt when the petition was filed. *See* Civil Minute filed September 16, 2015, Case No. 15-24826 (sustaining Trustee's objection to confirmation).

The problem here is that the Creditor has not filed any declaration to substantiate either objection. On the other hand, Creditor's objections raise serious concerns which, if accurate, are significant defects in the plan. Therefore, Creditor will be given an opportunity to file a declaration that substantiates its objections. Creditor shall file any such declaration by 5:00 p.m. Pacific Time on Friday, September 18, 2015. If no declaration is filed the court will deem Creditor's objections unfounded and may overrule the objections.

The objection to confirmation is continued to September 23, 2015, at 10:00 a.m.

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

28. 15-25740-B-13 VERNON/JULIET ATKINS
JPJ-1 Ronda N. Edgar

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-25-15 [14]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 26, 2015. The confirmation hearing for the amended plan is scheduled for October 7, 2015. The earlier plan filed July 19, 2015, is not confirmed.

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

29. 14-27541-B-13 JAMES TEETERS MOTION TO CONFIRM PLAN
EJS-1 Eric John Schwab 8-4-15 [110]

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

The court's decision is to not confirm the amended plan filed August 4, 2015, until the following are satisfied:

First, the order shall properly account for the length of the plan by stating the following: "the plan length shall be 6 months."

Second, the order shall properly account for payment terms under the amended plan by stating the following: "The Debtor has paid a total of $2,200.00 to the Trustee through August 2015. The Debtor shall make a 1-time lump sum payment of $45,000.00 in September 2015." The Debtor has provided a supplemental declaration stating that he is ready, willing, and able to make a 1-time lump sum payment in the amount of $45,000.00 on or before September 25, 2015.

Third, although the court entered an order on July 20, 2015, granting the substitution of attorney, Debtor's attorney must seek approval of fees by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Until the aforementioned conditions are satisfied, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

30. 10-34642-B-13 CA-3 — FRANK NIETO AND LORI MOORE-NIETO — Michael David Croddy — CONTINUED MOTION TO AVOID LIEN OF MAGGIE BRINKOETTER — 7-29-15 [117]

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

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

This matter was continued from August 12, 2015, due to improper service to Maggie Brinkoetter ("Creditor"). Creditor was required to file opposition by September 1, 2015, and Debtors were required to file any response by September 8, 2015. No documents have been filed by the Creditor or Debtors.

This is a request for an order avoiding the judicial lien of Creditor against property of Frank Nieto and Lori Moore-Nieto ("Debtors") commonly known as 1509 Greenbrier Road, West Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $7,815.00. An abstract of judgment was recorded with Yolo County on June 11, 2009, which encumbers the Property. All other liens recorded against the Property total $345,258.93.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703 in the amount of $1.00 on Schedule C.

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

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

31.	15-25642-B-13 JPJ-1	ERNIE/ANGELA RODRIGUEZ Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-26-15 [22]

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

The court's decision is to overrule the objection and confirm the plan.

Feasibility of the plan depends on the granting of a motion to value collateral of Acceptance Now. The motion to value the collateral was heard on September 2, 2015, and a civil minute order was entered on September 4, 2015, granting the motion to value the secured claim of Acceptance Now at $900.00.

Therefore, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 15, 2015, is confirmed.

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

32. 14-21547-B-13 JENNINE QUIRING
JPJ-3 Rick Morin
Thru #33

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7, MOTION TO DISMISS CASE
7-2-15 [87]

Tentative Ruling: The Trustee's Motion to Re-Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion to reconvert to a Chapter 7, unless the Debtor can cure the delinquency of $83.00 by the time this matter is heard.

This matter was continued from August 19, 2015, in order to be heard concurrently at the confirmation hearing of the first modified plan. The Chapter 13 Trustee's motion filed July 2, 2015, asserted that the Debtor was delinquent to the Trustee in the amount $3,351.00, which represents approximately 3 plan payments, with an additional $1,117.00 due on the date of the August 19, 2015, hearing. As of September 1, 2015, the Debtors are delinquent to the Trustee in the amount of $83.00, which represents approximately a 0.069 plan payment (Dkt. 104).

Unless the delinquency is cured by the time of the hearing, it does not appear that the Debtor is able to make plan payments proposed. As such, conversion to Chapter 7 is in the best interest of creditors pursuant to 11 U.S.C. § 1307(c).

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

33. 14-21547-B-13 JENNINE QUIRING
RJM-5 Rick Morin

MOTION TO MODIFY PLAN
8-11-15 [96]

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

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

First, the Debtor is not permitted to change the interest rate in a post-confirmation modified plan. 11 U.S.C. § 1329. The plan filed August 11, 2015, proposes to change the interest rate on the secured debt owed to County of Sacramento in Class 2A from 18% to 10%. The Trustee has already paid the creditor in the amount of $7,867.21 in accordance with the previously confirmed plan and the timely filed and allowed proof of claim.

Second, the Debtor is delinquent to the Trustee in the amount of $83.00, which represents approximately a 0.069 plan payment. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

34. 14-31850-B-13 TUA/SHING VANG MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 8-12-15 [44]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on August 12, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on August 12, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

35. 12-24455-B-13 BURNIE/CAROLYN ROW CONTINUED MOTION TO MODIFY PLAN
CA-2 Michael David Croddy 6-24-15 [40]

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

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

First, the Debtors have not shown their ability to make a lump sum payment from their lawsuit-personal injury accident that occurred in October 2012. The Debtors have not provided a detailed explanation of the status of the lawsuit, any settlement conferences, or if the matter has been set for trial. As such, the plan does not appear to be proposed in good faith as required under 11 U.S.C. §§ 1325(a)(3) and (a)(6).

Second, the modified plan does not properly account for all payments that the Debtors have paid to the Trustee to date, which is $12,441.00 through July 25, 2015.

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

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

36. 15-25155-B-13 DOUGLAS/DENISE BRITT
BLG-1 Pauldeep Bains
Thru #37

CONTINUED MOTION TO VALUE COLLATERAL OF HFC BENEFICIAL
7-1-15 [8]

Tentative Ruling: The Motion to Value Collateral of HFC Beneficial has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to value the secured claim of HFC Beneficial at $0.00.

This tentative is conditional upon a showing, at the time of the hearing, that Fed. R. Bankr. P. 7004(h) does not apply and that service by first-class mail as stated in the certificate of service, rather than by certified mail, is valid.

The motion to value filed by Douglas Britt and Denis Britt ("Debtors") to value the secured claim of HFC Beneficial ("Creditor") is accompanied by Debtors' declaration. Debtors the owners of the subject real property commonly known as 6204 Carlow Drive, Citrus Heights, California ("Property"). Debtors seek to value the Property at a fair market value of $167,991.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $213,689.44. Creditor's second deed of trust secures a claim with a balance of approximately $94,490.15. Therefore, Creditor's claim secured by a junior deed of trust is

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

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

37. 15-25155-B-13 JPJ-1 — DOUGLAS/DENISE BRITT — Pauldeep Bains — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE — 7-30-15 [27]

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

The court's decision is to overrule the objection and deny the motion to dismiss, subject to the granting of a motion to value collateral for HFC Beneficial, heard concurrently with this matter.

First, the Debtors assert they will be current on their plan payment.

Second, feasibility of the plan depends on the granting of motions to value collateral for Bank of America Home Loans and HFC Beneficial. The motion to value collateral for Bank of America was heard on August 17, 2015, by the Honorable Michael S. McManus and an order granting the motion was entered on August 26, 2015. The motion to value collateral for HFC Beneficial was continued from August 19, 2015, to today's date in order for the Debtors' attorney to show that Fed. R. Bankr. P. 7004(h) does not apply and that service by first-class mail as stated in the certificate of service, rather than by certified mail, is valid.

If the aforementioned issues are resolved at the time of the hearing, the plan would be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). As such, the objection would be overruled, the motion denied, and the plan filed June 26, 2015, would be confirmed. If not, the plan will not be confirmed.

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

38. 15-23669-B-13 DARLENE CHIAPUZIO-WONG MOTION TO CONFIRM PLAN
PGM-1 Pro Se 8-5-15 [27]
See Also #49

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on August 5, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan and provide 30 days for the Debtor to file, set, and serve an amended plan.

The Debtor submits to the Trustee's objections to confirmation – specifically that the Debtor is delinquent to the Trustee and has not filed, set for hearing, or served motions to value the collateral for Steven Breede and John Laughln – and requests that she be given additional time to file, set, and serve an amended plan. The Debtor is currently on a conditional order to confirm a plan on or before September 16, 2015.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed. The Debtor shall have 30 days to file, set, and serve an amended plan.

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

39. 12-39472-B-13 SANDY ROTHOVE MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 8-6-15 [39]

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

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

Although the modified plan does not specify a cure of the post-petition arrearage due to Carrington Mortgage Service, the Debtor proposes that the order granting the motion shall (1) contain additional provisions that the monthly payment to the Trustee be $2,195.00, commencing August 2015, for the remaining term of the plan and (2) that 1 post-petition mortgage payment be provided for in Class 1 in the amount of $1,025.00 at 0% interest and paid a dividend of $57.00 each month.

The Debtor provides a declaration stating that she can afford to make the additional payment of $65.00 per month.

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

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

40. 15-25581-B-13 JOSE/VILMA SANTOS
JPJ-1 Peter Lago

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-25-15 [21]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on September 11, 2015. The confirmation hearing for the amended plan is scheduled for October 13, 2015. The earlier plan filed July 15, 2015, is not confirmed.

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

41. 15-25582-B-13 ASHWANI MAYER AND POOJA VERMA
Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY FRESHKO PRODUCE SERVICES, INC.
8-27-15 [17]

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

The court's decision is to sustain the objection and not confirm the plan.

Freshko Produce Services, Inc. ("Creditor") objects to confirmation on the ground that the Debtors committed fraud or defalcation while acting in a fiduciary capacity as contemplated by 11 U.S.C. § 523(a)(4), and that the plan is not proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

Creditor and Debtors entered into a sales transaction in which Creditor sold and shipped perishable agricultural goods to Debtors. Creditor asserts that these sales transactions fall within the Perishable Agricultural Commodities Act ("PACA"). Creditor asserts that as PACA sale transactions, its claims have priority over all other secured, unsecured, and administrative claims; that its trust assets are not part of the bankruptcy estate; and that the Debtors' plan is not proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Debtors have not responded to the Creditor's objections.

Creditor's objections are well-founded. Congress has given PACA claims, such as Creditor's claim, special status and protection both inside and outside a bankruptcy case. These PACA claims are not simply "general unsecured claims" that may be dumped into the unsecured class and paid pro rata with other unsecured creditors as the Debtors have done in this case. If the Debtors believe otherwise, and have a good faith argument to support their belief, the burden is on them as the plan proponents to support their proposed treatment of the Creditor's PACA claim as a general unsecured claim as proposed. The Debtors have not met that burden. A plan that ignores the special nature of these PACA claims is a plan that is not proposed in good faith. Therefore, Creditor's objection is sustained and the Debtors' plan is not confirmed.

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

42. 15-22784-B-13 JOSEPH/HEATHER ADKINS MOTION TO RECONSIDER
DBJ-2 Bonnie Baker 8-31-15 [72]

DISMISSED: 9/09/15

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The case having previously been dismissed, Creditor[] Tri County Bank's Motion for Reconsideration of the Court's Decision Regarding Debtor's Motion to Value Property is dismissed as moot.

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

43. 15-24284-B-13 SHARLYN SWENDSEN
JPJ-3 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-6-15 [43]

DEBTOR DISMISSED: 08/26/2015

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The case having previously been dismissed, the Trustee's Objection to Debtor's Claim of Exemption is dismissed as moot.

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

44. 15-24484-B-13 JESSICA THOENE
JPJ-2 Robert W. Fong
Thru #45

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-6-15 [19]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

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

The Debtor is not entitled to claim her interest in real estate license and teaching as exempt under California Code of Civil Procedure § 704.210. This code is described as property that is not subject to enforcement of a money judgment.

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

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

45. 15-24484-B-13 JESSICA THOENE
KRK-5 Robert W. Fong

OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE CORPORATION
8-13-15 [28]

Final Ruling: The PHH Mortgage Corporation's Objection to Confirmation of Chapter 13 Plan was not properly filed at least 14 days prior to the hearing on the motion to confirm a plan, which was August 12, 2015. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2).

The court's decision is to deny with prejudice the objection to confirmation as untimely.

On August 12, 2015, the initial confirmation hearing was held. The hearing was subsequently continued to August 19, 2015. At that hearing the Trustee withdrew its objection to confirmation and its conditional motion to dismiss case, and there were no other timely objections by interested parties. As a result, the plan filed June 1, 2015, was confirmed.

PHH Mortgage Corporation ("Creditor") did not file its objection to confirmation at least 14 days prior to the August 12, 2014, hearing. Instead, Creditor filed its untimely objection on August 13, 2015, after the initial confirmation hearing was held. Therefore, Creditor's objection to confirmation is denied with prejudice.

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

46. 15-25888-B-13 JOSE/MARIA CORREIA
DPR-1 David P. Ritzinger
Thru #47

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
8-17-15 [15]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

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

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

The motion to value filed by Debtors to value the secured claim of [name of creditor] ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 2436 Skyview Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $430,750.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The senior lien secures a claim with a balance of approximately $447,941.80. Creditor's junior lien secures a claim with a balance of approximately $111,130.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

47. 15-25888-B-13 JOSE/MARIA CORREIA — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 David P. Ritzinger — 8-25-15 [20]

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

The court's decision is to overrule the objection and confirm the plan.

First, feasibility of the plan depends on the granting of a motion to value the collateral for Bank of America. The motion to value was heard concurrently with this matter and granted pursuant to 11 U.S.C. § 506(a). The claim of Bank of America, N.A. secured by a junior lien recorded against the real property commonly known as 2436 Skyview Circle, Fairfield, California, was determined to be a secured claim in the amount of $0.00.

Second, feasibility of the plan depends on the terms for the payment of the Debtors' attorney's fees. The Debtors propose that Section 2.07 of the plan "Administrative Expenses" be modified at time of hearing to include a provision directing that payments of $82.00 per month be paid from the plan on account for approved additional attorney's fees.

Provided that the plan confirming provide for the modification at Section 2.07, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 24, 2015, is confirmed.

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

48. 15-24490-B-13 SPENCER GIBBER MOTION TO CONFIRM PLAN
MG-1 Matthew J. Gilbert 8-3-15 [18]

Final Ruling: No appearance at the September 16, 2015, hearing is required.

The Motion to Confirm the 1st Amended Chapter 13 Plan Filed August 3, 2015, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 3, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

49.	15-23669-B-13 RK-1 **See also #38**	DARLENE CHIAPUZIO-WONG Roger Kosla	MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 9-8-15 [48]

DARLENE CHIAPUZIO-WONG VS.

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.