UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 13, 2016 at 1:00 p.m.

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1. 15-28100-B-13 TAMMY ANGEL — MOTION TO MODIFY PLAN
DBL-2 Bruce Charles Dwiggins — 10-14-16 [26]

Tentative Ruling: The Motion to Confirm First Modified Plan Dated October 14, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the duration of payments is unclear. The plan states that September 2016 is month 10, but September 2016 is month 11 since the petition was filed on October 16, 2015. The plan proposes an additional 38 monthly payments starting October 2016, which would make the duration of payments 49 months. But the plan states the duration of payments at Section 1.03 is 48 months.

Second, the plan fails to properly account for all payments made by the Debtor to the Trustee to date. The Debtor has paid a total of $2,030.00 to the Trustee through October 2016.

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

The court will enter an appropriate minute order.

2. 16-26003-B-13 ROBIN SWANSON — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
Thru #4 Michael O'Dowd Hays — 11-14-16 [37]

DEBTOR DISMISSED: 11/15/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required. The order to show cause is discharged as moot. The case was dismissed on November 15, 2016.

The court will enter an appropriate minute order.

3. 16-26003-B-13 ROBIN SWANSON — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Michael O'Dowd Hays — 11-14-16 [34]

DEBTOR DISMISSED: 11/15/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required. The Trustee's Objection to Confirmation is overruled as moot. The case was dismissed on November 15, 2016.

The court will enter an appropriate minute order.

4. 16-26003-B-13 ROBIN SWANSON — MOTION TO DISMISS CASE
JPJ-2 Michael O'Dowd Hays — 11-14-16 [38]

DEBTOR DISMISSED: 11/15/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required. The motion to dismiss case is denied as moot. The case was dismissed on November 15, 2016.

The court will enter an appropriate minute order.

5. 15-27404-B-13 CHARLES/DONNA SWIM — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
JPJ-2 Mark W. Briden — 11-4-16 [43]

DEBTOR DISMISSED:
11/22/2016
JOINT DEBTOR DISMISSED:
11/22/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required. The Trustee's Objection to Debtors' Claim of Exemption is overruled as moot. The case was dismissed on November 22, 2016.

The court will enter an appropriate minute order.

6. 10-32405-B-13 MARIA BENEL — MOTION TO REOPEN CHAPTER 13 BANKRUPTCY CASE
LP-5 Lewis Phon — 11-8-16 [114]
Thru #7

Final Ruling: No appearance at the December 13, 2016, hearing is required. The Ex Parte Application to Re-Open Chapter 13 Case is vacated as moot per order entered December 6, 2016.

The court will enter an appropriate minute order.

7. 10-32405-B-13 MARIA BENEL — MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
LP-5 Lewis Phon — 11-8-16 [117]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion for Discharge and for Waiver of Completion of Financial Education Course 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 grant the motion and to substitute Debtor's son, Jim Ventura, as representative of the estate to continue administration of the case and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order

> substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
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> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
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> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case through her son is possible and in the best interest of creditors.

The Debtor passed away on or about December 24, 2010. Thereafter, the Debtor's son diligently made and completed plan payments after the Debtor's death. The Trustee entered its final report and account on October 16, 2015. However, the Debtor is unable 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 will enter an appropriate minute order.

8. 12-39308-B-13 RANDY/TONI-MARIE CARLSON MOTION TO SELL
SDB-2 W. Scott de Bie 11-7-16 [48]
Thru #9

Tentative Ruling: The Motion for Order Approving Sale of Personal Property 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). The defaults of the non-responding parties are entered.

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

The Bankruptcy Code permits the Chapter 13 Debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as Minuteman Press of Sacramento, a printing business ("Personal Property").

The proposed purchaser of the property Cheryl Simcox has agreed to purchase the Personal Property for $19,000.00 in cash. As part of the escrow, sales taxes owing for the second quarter, third quarter, and as accrued for the fourth quarter of 2016 will be paid to the State Board of Equalization. It is estimated that this amount will be $5,275.00. Additionally, accountant fees of $600.00, employee wages owing of $5,000.00, and a post-petition supplier debt of $2,200.00 will be paid from the escrow. All other creditors with liens and security interests encumbering the subject property not voluntarily released will be paid the full market value of such interest as stated in Debtors' plan or held by the escrow holder until agreement by the parties or further court order. All costs of the sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds. The Debtors state that the sale is an arms length transaction and that they anticipate an estimated net proceed of $5,925.00 that will be used to pay the Trustee in furtherance of their plan.

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

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

The court will enter an appropriate minute order.

9. 12-39308-B-13 RANDY/TONI-MARIE CARLSON MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 11-7-16 [53]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 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 November 7, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10. 16-25708-B-13 CONSOLACION VELASCO — MOTION TO CONFIRM PLAN
PLG-2 Stuart M. Price — 10-31-16 [31]

Tentative Ruling: Debtor's Motion to Confirm Second Modified 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 second amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,148.16, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,999.98 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan underestimates the monthly contract installment to Wells Fargo Bank N.A. in Class 1. The lender filed a Notice of Mortgage Payment Change on October 3, 2016, stating that the new total monthly payment is $1,358.02. The plan will take approximately 77 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 amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

11.	16-26808-B-13 JPJ-1	TANIA HANSON Joseph Feist	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR CONDITIONAL MOTION TO DISMISS CASE 11-14-16 [15]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

There being no other objection to confirmation, the plan filed October 13, 2016, will be confirmed.

The court will enter an appropriate minute order.

12. 16-26710-B-13 JENNIFER MIZE
JPJ-1 Pro Se
Thru #13

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-23-16 [20]

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

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

First, the Debtor did not appear at the meeting of creditors set for November 17, 2016, as required pursuant to 11 U.S.C. § 343.

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

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

Fourth, it cannot be assessed whether unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. 11 U.S.C. § 1325(a)(4). According to Official Forms 106A/B and 106C, the total value of non-exempt property in the estate is $121,728.00. The total amount that will be paid to unsecured creditors has not been provided for in the Debtor's plan since Section 2.15 of the plan is blank.

Fifth, it does not appear that Debtor has the ability to make plan payments since she has a monthly net income of ($2,230.00) according to Official Form 106J, #23. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, it cannot be assessed whether the Debtor has fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs since the Debtor did not appear at the meeting of creditors and did not list any creditors on Official Forms 106D or 106E/F. The plan was not proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

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

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

The court will enter an appropriate minute order.

13. 16-26710-B-13 JENNIFER MIZE
PPR-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
11-28-16 [23]

Tentative Ruling: The Objections to Proposed Chapter 13 Plan and Confirmation 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 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 overrule the objection but deny confirmation of the plan for reasons stated at Item #12.

First, U.S. Bank National Association ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor asserts $148,443.29 is in default but has not yet filed a proof of claim. The Creditor provides no evidence of claimed pre-petition arrears. The Declaration of Tanisha Davis merely states an approximate amount in default and acknowledges that Creditor has not filed a proof of claim. No other supporting evidence in the form of exhibits is provided to explain the Creditor's default calculation. Without a proof of claim or evidence to support its assertion, the Creditor's objection is overruled.

Second, it is unclear to the court whether the Creditor requests dismissal of the case pursuant to 11 U.S.C. § 109(g) on the ground that the Debtor is currently not eligible for bankruptcy relief due to Debtor's willful failure to abide by orders in a prior case or to appear in its proper prosecution, or if Creditor requests dismissal of the case on bad faith grounds and seeks imposition of the § 109(g) filing bar. As such, the court declines to make a determination on the Creditor's motion to dismiss at this time. The court notes, however, that to the extent the Creditor wishes the court to bar the Debtor from refiling another petition, such relief requires prosecution of an adversary proceeding and no adversary proceeding has been filed. Fed. R. Bankr. P. 7001(7).

Third, although requested in the objection, Creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with its objection. Creditor is not awarded any attorneys' fees.

The objection is overruled. Nonetheless, the plan filed October 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #12.

The court will enter an appropriate minute order.

14. 16-20613-B-13 URAL THOMAS
LBG-3 Lucas B. Garcia

MOTION TO CONFIRM PLAN
10-10-16 [129]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on November 10, 2016. The confirmation hearing for the amended plan is scheduled for January 3, 2016. The earlier plan filed October 19, 2016, is not confirmed.

The court will enter an appropriate minute order.

15. 16-25614-B-13 BEVERLY BAKER HARRIS MOTION TO CONFIRM PLAN
SJS-2 Matthew J. DeCaminada 10-11-16 [35]
Thru #16

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

The court will enter an appropriate minute order.

16. 16-25614-B-13 BEVERLY BAKER HARRIS COUNTER MOTION TO DISMISS CASE
SJS-2 Matthew J. DeCaminada 11-21-16 [53]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the Motion to Confirm Amended Plan at Item #15, the Trustee's Counter Motion to Dismiss Case will be denied as moot.

The court will enter an appropriate minute order.

17. 16-25418-B-13 BENJAMIN/BRANDEE AHLSON MOTION TO DISMISS CASE
JPJ-2 Bruce Charles Dwiggins 11-14-16 [22]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Trustee's 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). 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-BuTrk (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 dismiss the case.

First, the Debtors failed to appear at the duly noticed first meeting of creditors set for October 13, 2016, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1)

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $850.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment of $425.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

18.	16-26719-B-13 JPJ-1 **Thru #19**	HENRY NGUYEN AND DANA DINH Jasmin T. Nguyen	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-8-16 [19]

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

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

First, the Debtors have not provided treatment for the secured claim of the Internal Revenue Service and thus have failed to demonstrate their ability to make the plan payments to the Trustee and retain their residence. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the claim of Bank of America for a second deed of trust on the Debtor's residence is misclassified as a Class 4 claim. The Debtors testified at the meeting of creditors on November 3, 2016, that the loan matures in 29 months. Thus, the proper classification for this claim is Class 2.

The plan filed October 7, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

19.	16-26719-B-13 LHL-1	HENRY NGUYEN AND DANA DINH Jasmin T. Nguyen	OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 11-4-16 [15]

Tentative Ruling: The 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 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 but deny confirmation for reasons stated at Item #18.

The objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor asserts that the monthly installment listed in the plan is incorrect at $1,083.00 and should actually be $365.84. Additionally, the creditor asserts $33,353.28 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed monthly installments and pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or

any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed October 7, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

20. 16-26320-B-13 JANELLE WATSON
APN-1 Peter G. Macaluso
Thru #21

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA, INC.
11-7-16 [18]

Tentative Ruling: Secured Creditor, Santander Consumer USA Inc.'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 overrule the objection for reasons stated at Item #21.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed September 22, 2016, is confirmed.

The court will enter an appropriate minute order.

21. 16-26320-B-13 JANELLE WATSON
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-7-16 [24]

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

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

Feasibility depends on the granting of a motion to value collateral of Santander Consumer USA for a 2006 Chevrolet Tahoe. That motion was granted at the hearing held on December 6, 2016. Dkt. 27. The Debtor properly served Santander Consumer USA at the address listed on Proof of Claim No. 1-1. No objection was filed in response to the Debtor's motion to value.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed September 22, 2016, is confirmed.

The court will enter an appropriate minute order.

22. 16-27724-B-13 JONNELL DEEN-CHASE MOTION TO IMPOSE AUTOMATIC STAY
PGM-1 Peter G. Macaluso 11-29-16 [8]

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 extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on June 1, 2016, on the Debtor's voluntary motion (case no. 16-23319, dkts. 11, 13). The Debtor's second bankruptcy case was dismissed on November 3, 2016, after Debtor failed to make plan payments (case no. 16-24264, dkts. 33, 36).

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor does not explain why the previous cases were filed but does explain that the present case was filed in order to protect her primary residence from foreclosure and to cure pre-petition arrears owed on the residence. The Debtor's schedules reflect that she is earning enough wages to cover her expenses and to succeed in her proposed plan.

The Debtor also asserts that there was substantial excuse for the dismissal of her two previous cases. In the first case, the Debtor had filed pro se, which Debtor realized was a mistake and she thereafter contacted attorney Peter Macaluso to refile. In the second case, the Debtor was unable to make all plan payments since the water pump in her vehicle required repair that cost the Debtor $600.00. Additionally, the Debtor's 30-year-old dental crown had deteriorated and, in an effort to prevent the need for a root canal, the Debtor had the crown replaced at $800.00. The Debtor states that there has been a substantial change from her previous cases to her present case because her water pump and dental crown problems are resolved. Additionally, the Debtor asserts that she is looking for a part-time job to supplemental her full-time job.

The Debtor has offered sufficient explanation from which the court can conclude that his financial or personal circumstances have changed substantially, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

The court will enter an appropriate minute order.

23. 14-26025-B-13 PLC-7 THOMAS/TONYA ROGERS
Peter L. Cianchetta

MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEBTORS' ATTORNEY
10-13-16 [91]

Tentative Ruling: The motion for compensation 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 in part and deny in part the motion as follows: (1) expenses will be allowed in the amount requested; and (2) the court will exercise its discretion to deduct hours it deems excessive and thereby significantly reduce the amount of attorney's fees awarded.

This is a motion for compensation filed by debtors Thomas L. Rogers and Tanya M. Rogers ("Debtors"). Debtors requests $5,425.00 in attorney's fees and $69.47 in expenses incurred for preparing two objections to mortgage payment notice, docket control numbers PLC-05 and PLC-06, filed by Seterus, Inc. ("Creditor"), as the authorized subservicer for Federal National Mortgage Association, and for preparing the present motion.[1]

Creditor filed a written opposition. Creditor does not dispute the statutory and contractual basis the Debtors cite as authority for an award of the attorney's fees and expenses requested in the motion. Nor does Creditor dispute that the Debtors may recover *expenses* under those statutory and contractual provisions. Rather, Creditor's objection is limited to the amount of attorney's fees requested. Creditor's opposition states only that the "[d]ebtors' request for fees is excessive." Dkt. 101 at 1:25.

Creditor's objection is well-taken. Accordingly, the Debtors' motion will be granted in part and denied in part as follows: (1) expenses will be allowed in the amount requested; and (2) the court will exercise its discretion to deduct hours it deems excessive and thereby significantly reduce the amount of attorney's fees awarded.

Discussion

We begin with the lodestar calculation. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). For docket control number PL-05, the Debtors request attorney's fees for 7.5 hours at $350.00 per hour for a total of **$2,625.00**.[2] For docket control number PLC-06, the Debtors request attorney's fees for 4 hours at $350.00 per hour for a total of **$1,400.00**. And for preparation of the present motion, the Debtors request attorney's fees for 3 hours at $350.00 per hour for a total of **$1,050.00**. Thus, the Debtors' request attorney's fees in the total amount of **$5,075.00** (and not the $5,425.00 incorrectly stated in the motion).

From the lodestar calculation, the court may deduct hours it deems excessive. *Moreno*

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[1]The total amount of attorney's fees requested should be $5,075.00, not $5,425.00. When the correct amount of $2,625.00 for PLC-05, *see* footnote 2, *infra*, is added to the $1,400.00 requested for PLC-06, and the $1,050.00 requested for the present motion, the total attorney's fees requested is $5,075.00.

[2]The time entries associated with PLC-05 state an amount of $2,975.00 Dkt. 94 at 24. However, that total amount includes 1 hour for which there was "no charge," *i.e.*, 8.50 x $350.00 rather than 7.50 x $350.00 Deducting $350.00 from $2,975.00 to account for the "no charge" 1 hour results in a total of $2,625.00.

v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). And because the court deems excessive the hours for which attorney's fees are requested, the court will exercise its discretion and make the deductions and reductions explained below.

Counsel's time is billed in half-hour increments. Although not unreasonable per se, billing in such large increments tends to suggest a practice of over billing. *See MacDonald v. Ford Motor Co.*, 2016 WL 3055643 (N.D. Cal. 2016) (citing *Alvarado v. FedEx Corp.*, 2011 WL 4708133 at *17 (N.D. Cal. 2011) (court reduced requested fees for billing in quarter-hour increments because use of such billing likely overstated the number of hours actually worked)). For that reason, the court *Mitchell Co., Inc. v. Campus*, 2009 WL 2567889 (S.D. Ala. 2009), addressed this problem by reducing time entries by one-half hour because counsel billed in one-half hour increments as opposed to six minute increments. *Id.* at 19; *see also Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358 at *6 (S.D. Ala. 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes). The court finds that approach reasonable and persuasive and will follow it.

The court makes the following deductions (and reductions) to the hours (and corresponding amount of attorney's fees requested) in the present motion.

I.	PLC-05			
	a.	8/15/16 @ 1.0	is reduced to:	.5
	b.	8/17/16 @ 1.5	is reduced to:	1.0
	c.	8/17/16 @ 3.5	is reduced to:	3.0
	d.	8/17/16 @ .5	is reduced to:	.0
	e.	8/22/16 @ 1.0	is reduced to:	.5
		7.5		5.00

Time *initially* allowed for PLC-05 is 5.0 hours at $350.00 per hour for a total of **$1,750.00**; however, this is subject to further reduction as explained below.

II.	PLC-06			
	a.	8/17/16 @ .5	is reduced to:	.0
	b.	8/17/16 @ 1.0	is reduced to:	.5
	c.	8/22/16 @ 1.5	is reduced to:	1.0
	d.	8/22/16 @ 1.0	is reduced to:	.5
		4.0		2.0

Time allowed for PLC-06 is 2.0 hours at $350.00 per hour for a total of **$700.00**.

III.	Fee Motion			
	a.	10/12/16 @ 2.5	is reduced to:	2.0
	b.	10/12/16 @ .5	is reduced to:	.0
		3.0		2.0

Time allowed for the present motion is 2.0 @ $350.00 per hour for a total of **$700.00**.

Further reduction of the PLC-05 time is warranted. The court notes that it took counsel 7.50 hours to do in PLC-05 what he essentially did in PLC-06 in 4.0 hours. In fact, it appears that in PLC-06 counsel did more than in PLC-05 because in PLC-06 he filed a memorandum of points and authorities that was not filed with PLC-05.[3]

Inasmuch as the court considers the time spent in PLC-06 to be a more accurate billing of the time necessary to object to Creditor's mortgage payment change notice the court will further deduct an additional 3.00 hours from the adjusted time in PLC-05 so that

[3]PLC-05 consists of a three-page objection, a two-page form notice of hearing, two two-page declarations, and a two-page form certificate of service. PLC-06 similarly consists of a three-page objection, a two-page form notice of hearing, two two-page declarations, a four-page memorandum of points and authorities, and a two-page form certificate of service.

PLC-05 is consistent with the adjusted time in PLC-06. Thus, the time for PLC-05 is further reduced to 2.0 hours at $350.00 per hour for a total for PLC-05 of **$700.00**.

Therefore, for all the foregoing reasons, the Debtors' motion for compensation will be granted in part and denied in part as follows:

(1) Granted as to expenses in the amount of $69.47.

(2) Granted as to attorney's fees in the amount of $2,100.00.

(3) Denied as to attorney's fees in excess of $2,100.00.

The court will enter an appropriate minute order.

24. 16-23626-B-13 CHARLES BARNARD MOTION TO CONFIRM PLAN
EWV-110 Eric W. Vandermey 10-14-16 [50]

Tentative Ruling: The Motion to Confirm First 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 first amended plan.

Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $6,262.93 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.

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

The court will enter an appropriate minute order.

25. 16-25429-B-13 JANET/ROBERT FAWCETT MOTION TO CONFIRM PLAN
SLE-1 Steele Lanphier 10-5-16 [17]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 5, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

26. 16-26332-B-13 PORTIA DASS
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-15-16 [34]

DISMISSED: 12/01/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required. The order to show cause is discharged as moot. The case was dismissed on December 1, 2016.

The court will enter an appropriate minute order.

27. 16-25233-B-13 HELEN ZUNIGA MOTION TO CONFIRM PLAN
PLC-1 Peter L. Cianchetta 10-17-16 [30]

Tentative Ruling: The Motion to Confirm the Amended 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 confirm the first amended plan.

The plan filed October 17, 2016, does not specify as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. However, the Debtor has filed a response stating that attorney's fees shall be paid pursuant to Local Bankr. R. 2016-1(c) and that this will be included in the order confirming. *See* dkt. 38, exh. 1.

The amended plan, with the proposed language in the order confirming, complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

28. 16-24534-B-13 GLORIA/LOUIS OMANIA MOTION TO CONFIRM PLAN
RLG-2 Robert L. Goldstein 10-25-16 [28]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Confirm Second 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 second amended plan.

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

The court will enter an appropriate minute order.

29. 13-24835-B-13 SUZANNE ERICKSON — MOTION TO VACATE DISMISSAL OF CASE
PGM-2 Peter G. Macaluso — 10-31-16 [39]
Thru #30

DEBTOR DISMISSED: 10/26/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal 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 to vacate dismissal.

Debtor argues that either mistake or excusable neglect justifies the court vacating the order dismissing the case. Debtor asserts that she was unaware that her plan filed September 1, 2016, was denied and that her case was subject to dismiss. Furthermore, Debtor states that she continued to make plan payments in the amount specified in the plan dated September 1, 2016, rather than the required amount as stated in the Trustee's opposition dated September 27, 2016, and Debtor's counsel's response dated October 4, 2016. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtor continued to make payments in the amount of $1,450.00 for the months of September and October rather than the required amount of $1,479.00. Debtor also is in month 42 of her 60-month plan. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.,* 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the Debtor was unaware of the required increase in plan payments despite the fact that Debtor's counsel had acknowledged the required increase in his response to the Trustee's opposition. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court will enter an appropriate minute order.

30. 13-24835-B-13 SUZANNE ERICKSON — MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso — 10-31-16 [43]

DEBTOR DISMISSED: 10/26/2016

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 31, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule

9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The modified plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home Mortgage for the month of October 2016 including a specific post-petition arrearage amount, interest rate, and monthly dividend.

The Debtor has filed a response requesting additional time to further amend her Chapter 13 plan. Since the Debtor acknowledges that the plan filed October 31, 2016, is not confirmable, the plan will not be confirmed and the Debtor may file a revised modified plan. An amended plan, and motion to confirm it, together with all required supporting documents shall be filed and served by December 30, 2016, or this case may be dismissed on the Trustee's ex parte application.

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

The court will enter an appropriate minute order.

31. 16-24935-B-13 MICHAEL GRAZIADEI MOTION TO CONFIRM PLAN
MET-1 Mary Ellen Terranella 11-1-16 [22]
Thru #32

Tentative Ruling: The Motion to Confirm 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 deny the motion as moot and not confirm the plan.

The plan filed July 28, 2016, that is the subject to this motion was denied on October 4, 2016. Although the Debtor has filed amendments to his schedules, the fact remains that the court had denied the motion to confirm on October 4, 2016. Therefore, the Debtor must file a motion to vacate or reconsider the order denying confirmation, or file an amended plan and motion to confirm it.

The motion is denied as moot.

The court will enter an appropriate minute order.

32. 16-24935-B-13 MICHAEL GRAZIADEI COUNTER MOTION TO DISMISS CASE
MET-1 Mary Ellen Terranella 11-22-16 [30]

Tentative Ruling: The motion will be conditionally denied.

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

The court will enter an appropriate minute order.

33. 16-23136-B-13 PHILLIP/TRUDY MENDOZA MOTION TO DISMISS CASE
JPJ-2 Peter L. Cianchetta 11-15-16 [40]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Trustee's 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). 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-BuTrk (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 dismiss the case.

The Debtors have failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of Chapter 13 plan was heard and sustained on August 9, 2016. To date, the Debtors have not taken any further action to confirm a plan in this case.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

34. 16-25436-B-13 MARILYN OVERHOFF COUNTER MOTION TO DISMISS CASE
DBJ-1 Douglas B. Jacobs 11-29-16 [50]
Thru #35

Tentative Ruling: The motion will be conditionally denied.

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

The court will enter an appropriate minute order.

35. 16-25436-B-13 MARILYN OVERHOFF MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs 10-27-16 [38]

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

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

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

Second, the estate cannot be effectively administered because the monthly contract installment amount for Financial Freedom is $0.00 and there is no arrearage dividend amount listed.

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

The court will enter an appropriate minute order.

36. 16-26242-B-13 JPJ-1 **Thru #37**

STEVEN/LINDA MAYNERICH
Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-27-16 [23]

Tentative Ruling: This matter was continued from November 15, 2016, in order to be heard in conjunction with the Motion to Value Collateral of Citibank, N.A. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

37. 16-26242-B-13 PGM-1

STEVEN/LINDA MAYNERICH
Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
10-21-16 [14]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Value Collateral of Citibank, 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 Citibank, N.A. at $0.00.

Debtor's motion to value the secured claim of Citibank, N.A.] ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 773 Roscommon Drive, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $400,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *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 $437,575.65. Creditor's second deed of trust secures a claim with a balance of approximately $64,148.60. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

38.	10-49445-B-13 RLG-6	ALVIN/CELESTE DE LOS REYES Robert L. Goldstein	MOTION TO AVOID LIEN OF GMAC MORTGAGE, LLC 10-28-16 [103]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Avoid Lien of GMAC Mortgage, LLC, and/or Any Servicers or Successors 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 deny the motion to avoid lien without prejudice.

This is a request for an order avoiding the lien of GMAC Mortgage, LLC ("Creditor") who holds a second deed of trust against the Debtors' property commonly known as 506 Frogs Leap Court, Fairfield, California ("Property").

Debtors state that on January 14, 2011, the Hon. Thomas Holman had granted the Debtors' motion to value real property and found Creditor's secured claim, held by a second deed of trust against the Property, to be in the amount of $0.00. *See* dkt. 35. Debtors completed their Chapter 13 plan payments and received their discharge on March 14, 2016, and now seek to avoid the lien in its entirety.

Discussion

A debtor who seeks to avoid a second deed of trust in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). *See Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's deed of trust remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the Creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. *See also* 11 U.S.C. § 1325(a)(5)(B)(I).

Because the Debtors seek to avoid the second deed of trust of GMAC Mortgage, LLC, they must do so through an adversary proceeding. Therefore, this motion is denied without prejudice.

The court will enter an appropriate minute order.

39. 14-26446-B-13 TODD/DENISE BEINGESSNER MOTION TO MODIFY PLAN
SJS-8 Scott J. Sagaria 10-28-16 [99]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 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 October 28, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

40. 16-26847-B-13 MARISSA BOYD
JPJ-1 Thomas L. Amberg

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-23-16 [15]

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

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

The Debtor has filed a response addressing all the issues raised in the Trustee's objection regarding improper voluntary retirement contributions, the incorrect Administrative Expense Multiplier, and incorrect plan payments. However, the proposed changes made by the Debtor appear too extensive to be resolved in an order confirming and the Debtor should instead file an amended plan.

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

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

The court will enter an appropriate minute order.

41. 11-39148-B-13 DAVID/DOROTHY JONES
SDB-8 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF MOUNTAINVIEW CAPITAL HOLDINGS
11-1-16 [83]

Tentative Ruling: Debtors' Motion for Order Valuing Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and no opposition has been filed by interested parties. However, there is no evidence in the form of exhibits to show that Mountainview Capital Holdings, serviced by Statebridge Company, acquired the second deed of trust against real property located at 916 Beechwood Circle, Suisun City, California, from Promor Investments LLC. Promor Investments LLC filed Proof of Claim No. 4-1 which claims a secured amount of $72,741.63 against the subject property.

The matter is continued to January 3, 2017, at 1:00 p.m. The Debtor shall file and serve missing exhibits by December 20, 2016.

The court will enter an appropriate minute order.

42.	16-20848-B-13 JPJ-1	SCOTT/LORI ARNOLD Peter G. Macaluso	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 12 10-17-16 [29]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 12-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 12-1. The claim is asserted to be in the amount of $1,414.25. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about May 14, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 16, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

43. 15-28549-B-13 SHARON WILDEE MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 10-24-16 [82]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 24, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of $95.00, which represents approximately 1/10 of one plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,135.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

44.	15-28551-B-13 JPJ-2	DONCELLA LOGAN Lucas B. Garcia	AMENDED OBJECTION TO CLAIM OF SANTANDER CONSUMER USA, CLAIM NUMBER 2 10-6-16 [42]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 2 of Santander Consumer USA and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Santander Consumer USA ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $24,974.09. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was March 2, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 9. The Creditor's Proof of Claim was filed September 7, 2016.

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

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

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

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

Id. at 1432.

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

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

The court will enter an appropriate minute order.

45. 16-26451-B-13 OSCAR/ARACI PERES
JPJ-1 Peter G. Macaluso
Thru #46

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-7-16 [13]

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

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

Feasibility depends on the granting of a motion to value collateral of Autoville Motors for a 2000 Honda Civic. That motion is denied without prejudice at Item #46. Additionally, feasibility depends on the granting of a motion to value collateral of Autoville Motors for a 2005 Ford Freestar. That motion was denied without prejudice on December 6, 2016. Dkt. 26.

Therefore, the plan filed September 28, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

46. 16-26451-B-13 OSCAR/ARACI PERES
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF AUTOVILLE MOTORS
11-11-16 [21]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

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

Debtors' motion to value secured claim of Autoville Motors ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2000 Honda Civic ("Vehicle"). According to the motion and declaration, Debtors seek to value the Vehicle at a replacement value of $500.00 as of the petition filing date. The Debtors assert that the Vehicle has 155,000 miles, that it needs a battery and tires, and that the carburetor and engine do not work. However, no other evidence in the form of exhibits is provided and 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 will enter an appropriate minute order.

47. 16-22152-B-13 THOMAS/DENISE RAHMING MOTION TO MODIFY PLAN
NBC-1 Eamonn Foster 11-1-16 [19]

Tentative Ruling: The Motion to Confirm First Modified 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 are delinquent to the Chapter 13 Trustee in the amount of $2,070.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan does not specify a cure of the post-petition arrearage, including a specific post-petition arrearage amount, interest rate, and monthly dividend, owed to Nationstar Mortgage for months June 2016 and October 2016.

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

The court will enter an appropriate minute order.

48. 16-26552-B-13 WALTER GRAMPS
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-14-16 [13]

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

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

The claim of Toyota Motor Credit is misclassified as a Class 4 claim. Class 4 claims are secured claims that mature after completion of the plan. However, it appears that the loan will mature in approximately 11 months based on the balance of the loan listed in Schedule D and the monthly contract installments listed in the plan. The Debtor testified under oath at the meeting of creditors on November 10, 2016, that the balance of the loan is $3,060.00 and that he, and not the co-Debtor, has made all payments to this creditor and that he, and not co-Debtor, will continue to make payments to this creditor. The proper classification of this secured claim is Class 2A.

The plan filed September 30, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

49. 16-26754-B-13 MICHAEL/SASHA KELLY
JPJ-1 Debora N. Paul
Thru #50

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-23-16 [21]

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

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 December 8, 2016. The confirmation hearing for the amended plan is scheduled for January 24, 2017. The earlier plan filed October 11, 2016, is not confirmed.

The court will enter an appropriate minute order.

50. 16-26754-B-13 MICHAEL/SASHA KELLY
MJ-1 Debora N. Paul

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
11-28-16 [25]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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.

Subsequent to the filing of the Bank of America, N.A.'s objection, the Debtors filed an amended plan on December 8, 2016. The confirmation hearing for the amended plan is scheduled for January 24, 2017. The earlier plan filed October 11, 2016, is not confirmed.

The court will enter an appropriate minute order.

51. 16-24757-B-13 RAQUEL BRIONES MOTION TO CONFIRM PLAN
TOG-1 Thomas O. Gillis 10-27-16 [28]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Confirm the First Amended Chapter 13 Plan of Debtor 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 October 27, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

52. 16-25658-B-13 JOHN/MARGARET FRAUMENI MOTION TO CONFIRM PLAN
RSG-1 Robert S. Gimblin 10-14-16 [16]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The 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 Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on October 14, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

53. 16-26062-B-13 NOMIE PATTON
EJS-2 Eric John Schwab
Thru #54

MOTION TO AVOID LIEN OF SUNLAN - 020105 LLC
10-21-16 [28]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Avoid Judicial Lien 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 to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Sunlan-020105 LLC ("Creditor") against the Debtor's property commonly known as 2601 Cadjew Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,106.04. An abstract of judgment was recorded with Sacramento County on March 20, 2014, which encumbers the Property. However, Creditor filed Claim No. 5-1, which lists its claim as secured in the amount of $2,486.18. All other liens recorded against the Property total $159,952.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $228,414.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $68,462.00 on Schedule C.

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

The court will enter an appropriate minute order.

54. 16-26062-B-13 NOMIE PATTON
JPJ-1 Eric John Schwab

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-27-16 [33]

Tentative Ruling: This matter was continued from November 15, 2016, in order to be heard in conjunction with Debtor's motion to avoid judicial lien of Sunlan-020105 LLC. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was originally 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 overrule the objection and deny the motion to dismiss provided that the Debtor has provided copies of her 2015 tax returns to the Chapter 13 Trustee.

First, feasibility depends on the granting of the motion to avoid judicial lien held by Sunlan-020105 LLC. That motion was granted at Item #53.

Second, the meeting of creditors was held open to November 17, 2016, to allow the Debtor to file her 2015 tax returns pursuant to 11 U.S.C. § 1308. The Debtor and her counsel did not appear at the continued meeting of creditors and it is unclear whether the Debtor has provided copies of her tax returns to the Trustee.

If the Debtor has provided copies of her tax returns to the Trustee and the Trustee finds that the plan has been proposed in good faith, the plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled, the motion to dismiss will be denied, and the plan filed September 26, 2016, will be confirmed.

The court will enter an appropriate minute order.

55. 16-25763-B-13 CRYSTAL COULSTON MOTION TO DISMISS CASE
JPJ-2 Matin Rajabov 11-4-16 [35]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Trustee's 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). 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-BuTrk (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 dismiss the case.

First, the Debtors is delinquent to the Chapter 13 Trustee in the amount of $7,533.00, which represents approximately 2 plan payments. Before this motion will be heard, an additional plan payment amount of $4,347.00 will also be due. The Debtor does not appear to be able to make plan payments since the petition was filed on August 30, 2016. There is cause to dismiss the case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Second, the Debtor has failed to provide the Trustee with copies of her payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has failed to comply with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, 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).

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

Although the Trustee asserted that the Debtor has not prosecuted this case by failing to file, set for hearing, or serve a motion to confirm plan, thereby causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1), the Debtor did file, set for hearing, and served an amended plan on November 28, 2016.

Nonetheless, the Debtor has not resolved the other issues raised by the Trustee and has not filed any objection to the Trustee's motion to dismiss. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

56. 16-21664-B-13 HLG-2 — BRYAN ULRICK AND BILLI JO RICHMOND-ULRICK — Kristy A. Hernandez — MOTION TO MODIFY PLAN — 10-31-16 [40]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Confirm First Modified Chapter 13 Plan Filed on October 31, 2016, 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 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 October 31, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

57. 16-20568-B-13 JPJ-1 — NATALIE PELTON, Richard L. Jare — AMENDED OBJECTION TO CLAIM OF SILVER CLOUD FINANCIAL, INC, CLAIM NUMBER 7, 10-6-16 [53]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 7 of Silver Cloud Financial Inc. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Silver Cloud Financial Inc. ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $780.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was June 1, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 16. The Creditor's Proof of Claim was filed June 2, 2016.

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

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

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

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

Id. at 1432.

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

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

The court will enter an appropriate minute order.

58. 11-48070-B-13 DOUGLAS/TANA TOLSON
RLC-2 Stephen M. Reynolds

MOTION TO RECONSIDER DISMISSAL OF CASE
11-5-16 [86]

DEBTOR DISMISSED:
10/24/2016
JOINT DEBTOR DISMISSED:
10/24/2016

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Reconsider Order Dismissing Case [F.R.B.P. 9023, 9024] 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 to vacate dismissal.

Debtors argue that either mistake or excusable neglect justifies the court vacating the order dismissing the case. Debtors' modified plan filed May 31, 2016, was denied on July 19, 2016, and the Debtors were given 75 days to confirm a new modified plan. On or about August 25, 2016, Debtors' counsel had drafted a modified plan addressing the Trustee's concerns but failed to file and serve the modified plan. Instead, the Debtors' counsel filed a motion to approve loan modification on September 23, 2016, since Ocwen Loan Servicing, LLC, successor to GMAC Mortgage, had offered the Debtors a loan modification.

The Declaration of Stephen M. Reynolds states that counsel confused the requirement to confirm a modified plan with the need to obtain approval of the loan modification. As a result, the Trustee filed a motion to dismiss case on October 20, 2016, which the court granted on October 24, 2016. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtors have been making plan payments since 2012 and denial of the present motion would prejudice the Debtors and deny them a discharge. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.,* 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the case was dismissed due to Debtors' counsel inadvertence in filing only a motion to approve loan modification and not the motion to confirm modified plan. This resulted in the expiration of the 75-day deadline and dismissal of Debtors' case. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court will enter an appropriate minute order.

59. 13-33272-B-13 RICHARD/KARIN DUFF — MOTION TO APPROVE LOAN MODIFICATION
EGS-1 Mary Ellen Terranella — 10-21-16 [31]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Application to Approve Loan Modification with Bayview Loan Servicing, LLC re: Debtors' Principal Residence Located at 1904 Rollingwood Drive, Fairfield, CA 94534 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 deny without prejudice the loan modification requested.

Bayview Loan Servicing, LLC ("Creditor") seeks court approval for the Debtor to incur post-petition credit. The Creditor has agreed to a loan modification with respect to the Debtors' principal residence located at 1904 Rollingwood Drive, Fairfield, California. The Creditor was assigned the first deed of trust from Bank of America, who itself was assigned the first deed of trust from Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4. The loan modification which will increase Debtors' monthly mortgage payment from the current $2,267.00 a month to $2,583.55 per month for years 1 through 5. The modification increases the principal balance on the note by $8,109.90 or from $466,762.40 to $474,872.30.

The motion is supported by the Declaration of Daine Barron, employee of Creditor. The Declaration affirms the Creditor's desire to obtain the post-petition financing. However, no declaration is submitted by the Debtors indicating their desire or ability to pay this claim on the modified terms. Indeed, it does not appear that the Debtors can afford the payment on the modified terms based on their monthly disposable income as listed in the schedules.

This post-petition financing is not consistent with the Chapter 13 plan in this case or the Debtors' ability to fund that plan. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

60. 16-26572-B-13 JPJ-1 — FRANK RUBALCAVA AND ARIANA CABRAL — Diana J. Cavanaugh — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-23-16 [18]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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.

Debtor Frank Rubalcava testified at the meeting of creditors held November 17, 2016, that he transferred his interest in a 2014 Dodge Ram 1500, listed under 3.4 of Official Form 106A/B, post-petition without permission of the court. This is contrary to Local Bankr. R. 3015-1(i)(1)(A). The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(1), (3).

The plan filed October 13, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

61. 16-24873-B-13 LYNDA COBURN MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 10-27-16 [29]

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on October 27, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Chapter 13 Trustee objects to confirmation on grounds that Debtor has not filed a Notice of Related Case since Debtor's husband has a pending bankruptcy case, and that there is an unexplained decrease in the Debtor's portion of equity in real property that would effect the amount of non-exempt property in the estate and the distribution to unsecured creditors. *See* 11 U.S.C. § 1325(a)(3) and (a)(4).

The Debtor has filed amended schedules on December 9, 2016, to reflect Debtor's spouse's pending bankruptcy. Additionally, the Debtor has filed a response stating that her only interest in the subject real property is $20,000.00 that she took out from her 401k as down payment on the property. The Declaration of Lynda Coburn states that her daughter has made all mortgage payments on the home and that the Debtor had taken title with her father and mother for credit purposes. The court finds that the Debtor has resolved the Trustee's issues.

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

The court will enter an appropriate minute order.

62. 16-24973-B-13 MARTIN/ANNETTE SNEZEK MOTION TO CONFIRM PLAN
LA-1 Steele Lanphier 10-6-16 [42]
Thru #63

Tentative Ruling: The Motion to Confirm Amended Chapter 13 Plan hahas 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.

Feasibility depends on the granting of a motion to value collateral for Internal Revenue Service and Franchise Tax Board. The Debtors' motion to value collateral for Internal Revenue Service was heard and denied on November 2, 2016. Debtors' motion to value collateral for Franchise Tax Board was heard and denied on November 8, 2016. To date, the Debtors have not filed, set for hearing, and served on the respondent creditors and Trustee a motion to value collateral.

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

The court will enter an appropriate minute order.

63. 16-24973-B-13 MARTIN/ANNETTE SNEZEK COUNTER MOTION TO DISMISS CASE
LA-1 Steele Lanphier 11-29-16 [62]

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.

The court will enter an appropriate minute order.

64. 15-20375-B-13 FRONA LEE
DJC-1 Diana J. Cavanaugh

MOTION TO MODIFY PLAN
10-28-16 [26]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Confirm Debtor's First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 October 28, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

65. 11-25279-B-13 HANNAH PLETZ
16-2188 MAL-1
PLETZ V. OCWEN LOAN SERVICING LLC ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION FOR MORE DEFINITE STATEMENT
11-1-16 [13]

Tentative Ruling: The Motion to Dismiss the Adversary Complaint, or in the Alternative, For More Definite Statement 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 deny the motion to dismiss and grant the motion for more definite statement with leave to amend.

Discussion

Federal Rule of Civil Procedure ("Civil Rule") 12(e) (applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7021(b)) states as follows: "A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). A motion for a more definite statement is proper where the complaint is indefinite and the defendant cannot ascertain the nature of the claim asserted. *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994) (citation omitted); *see also True v. Am. Honda Motor Co., Inc.*, 520 F. Supp. 2d 1175, 1180 (C.D. Cal. 2007) (quoting *Sagan*, 874 F. Supp. at 1077).

Defendant filed the present motion on November 1, 2016, which is three days before the court *sua sponte* dismissed without prejudice the second and third causes of action in Plaintiff's complaint on November 4, 2016. The second cause of action alleged that Defendant attempted to collect a discharged debt in violation of 11 U.S.C. § 1328. The third cause of action alleged that Defendant attempted to collect a discharged debt in violation of 11 U.S.C. § 524. The court dismissed both causes of action as claims by the Plaintiff to hold the Defendant in contempt which, according to the Ninth Circuit in *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186 (9th Cir. 2011), are properly brought by motion as a contested matter under Bankruptcy Rules 9014 and 9020.

Inasmuch as the remaining claims for relief are intertwined with the dismissed discharge-related claims for relief, the dismissal of the latter impacts the former. Therefore, in order to provide the Defendant with a clear understanding of the precise nature and extent of the claims alleged against it, and the basis of its alleged liability to the Plaintiff, the court will provide Plaintiff with an opportunity to amend the complaint to account for the dismissal of the discharge/contempt claims.

Therefore, based on the foregoing, the motion to dismiss under Civil Rule 12(b)(6) will be denied, the motion for a more definite statement under Civil Rule 12(e) will be granted, and Plaintiff shall have until December 30, 2016, to file and serve an amended complaint. If Plaintiff fails to file and serve an amended complaint by December 30, 2016, this adversary proceeding will be dismissed with prejudice.

The court will enter an appropriate minute order.

66. 16-25580-B-13 DEBORA FLORES — MOTION TO CONFIRM PLAN
MMM-1 Mohammad M. Mokarram — 10-10-16 [15]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Motion to Confirm Chapter 13 Plan Filed on October 10, 2016, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 October 10, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

67. 16-27081-B-13 CJY-1 | MICHELLE SHAMBOURGER
Christian J. Younger | MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE, LLC
10-28-16 [8]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

The court's decision is to value the secured claim of American Credit Acceptance, LLC at $6,898.00.

Debtor's motion to value the secured claim of American Credit Acceptance, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Mazda 3 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,898.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in December 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,983.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $6,898.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

68. 15-25582-B-13 ASHWANI/ASHWANI MAYER — AMENDED MOTION TO STRIKE
15-2188 — 10-24-16 [42]
FRESHKO PRODUCE SERVICES, INC.
V. MAYER

Tentative Ruling: The Amended Motion to Strike Defendants' Designation of Expert Witnesses 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). A response was filed by the Defendants.

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

Plaintiff Freshko Produce Services, Inc. ("Plaintiff") moves to strike the designation of expert witnesses filed by Defendants Ashwani Mayer and Pooja Verma ("Defendants") as untimely under Federal Rule of Civil Procedure ("Civil Rule) 26(a)(2) (applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7026) and this court's scheduling order issued on April 5, 2016.

On April 5, 2016, the court issued a scheduling which included specific deadlines. Dkt. 26. The deadline for the designation of expert witnesses was set for September 30, 2016. Plaintiff timely filed its expert witness list on September 30, 2016. Dkt. 36. Defendants untimely filed their expert witness list on October 11, 2016. Dkt. 38. Defendants also failed to submit written reports from their purported experts as required by Civil Rule 26(a)(2) (applicable by Bankruptcy Rule 7026).

Plaintiff has moved to strike Defendants' expert witnesses and preclude their testimony at trial. Defendants do not oppose Plaintiff's motion to strike and, in fact, on November 29, 2016, Defendants filed a non-opposition to Plaintiff's motion. The non-opposition concedes that Defendants' expert witness designations are untimely and attributes the untimely disclosure of expert witnesses to a calendaring error. There is no declaration filed with the non-opposition to support the calendaring error excuse.

Discussion

The court does not believe that Defendants' failure to timely disclose expert witnesses by the scheduling order deadline was due to a calendering error. First, there is no declaration to support that. Second, there is no October 11, 2016, deadline set in the scheduling order. In fact, there is no other October 2016 deadline in the scheduling order other than the October 31, 2016, discovery cut-off date which the court finds difficult to believe the Defendants could confuse for an October 11, 2016, expert witness designation deadline.

Even if the court were to believe that Defendants' untimely expert witness disclosures was due to a calendaring error, the court would nevertheless grant Plaintiff's motion because Plaintiffs have suffered significant prejudice as a result of Defendants' untimely disclosure. Discovery is now closed and this adversary proceeding is ready to be set for trial. As noted above, discovery closed on October 31, 2016. Thus, not only is it not presently possible for Plaintiff to test the qualifications of Defendants' purported experts, but, at the time of Defendants' untimely disclosure on October 11, 2016, there was insufficient time for Plaintiff to compel the disclosure of the purported experts' written reports, review those reports, and take the depositions of the purported experts.

Therefore, for the foregoing reasons, Plaintiff's motion to strike Defendants' untimely expert witness disclosures will be granted and Defendants shall not be permitted at trial or otherwise to provide testimony by their purported experts.

The court will enter an appropriate minute order.

69. 16-26382-B-13 JPJ-1 **Thru #71**

ANDREY KOLESNIKOV
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
11-8-16 [20]

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

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

First, the Debtor did not appear at the meeting of creditors set for November 3, 2016, as required pursuant to 11 U.S.C. § 343.

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

Third, 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).

Fourth, the Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has failed to disclose his income for the years 2014 and 2015. Additionally, he has failed to disclose on this petition two previous bankruptcies filed within the last eight years. The plan has not bene proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

The court will enter an appropriate minute order.

70. 16-26382-B-13 JPJ-2

ANDREY KOLESNIKOV
Pro Se

MOTION TO DISMISS CASE
11-8-16 [23]

Tentative Ruling: The motion will be conditionally denied.

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

The court will enter an appropriate minute order.

71. 16-26382-B-13 JPJ-3

ANDREY KOLESNIKOV
Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-8-16 [27]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

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

The Debtor has claimed his primary residence as exempt under California Code of Civil Procedure § 704.730(a) in the amount of $250,000.00. However, the Debtor has failed to show that he is at least 65 years old. Additionally, the Debtor's schedules indicate that he is not married, has no dependents, and is not otherwise a member of a family unit. The Debtor has not shown that he is mentally or physically disabled or otherwise unable to engage in substantial gainful employment. Therefore, the Debtor is entitled to an exemption on his residence of no more than $75,000.00 pursuant to § 704.730(a)(1).

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

The court will enter an appropriate minute order.

72.	16-26585-B-13 JPJ-1	CATHERINE CRUZ AND JACK LAM Bert M. Vega	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-23-16 [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 sustain the objection and conditionally deny the motion to dismiss.

First, the Debtors have not amended their petition to add a prior bankruptcy case as requested by the Trustee at the meeting of creditors held on November 17, 2016. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Depending on the value of Debtors' primary residence which the Trustee objects, the total amount of non-exempt property in the estate may be $78,725.60. However, the total amount that will be paid to unsecured creditors is $0.00.

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

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

The court will enter an appropriate minute order.

73.	16-23189-B-13 PGM-2	ANTHONY DAY Peter G. Macaluso	OBJECTION TO CLAIM OF UNIFUND CCR, LLC, CLAIM NUMBER 3 10-27-16 [58]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Objection to the Claim of Unifund CCR, LLC, Filed on July 8, 2016, Claim No. 3-1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 3-1 of Unifund CCR, LLC and disallow the claim in its entirety.

Anthony Day, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of Unifund CCR, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of $27,973.77. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about October 10, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 15, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

74. 16-22891-B-13 DANIEL/NANCY BALAGUY
DAO-3 Dale A. Orthner

MOTION TO CONFIRM SECOND AMENDED PLAN
10-27-16 [74]

Tentative Ruling: The Motion to Confirm Second Amended 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 second amended plan.

The plan will take approximately 81 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 amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

75.	16-25992-B-13 GG-1 **Thru #76**	EMANUEL/ELIZABETH RODRIGUES Gerald B. Glazer	MOTION TO VALUE COLLATERAL OF CFAM FINANCIAL SERVICES, LLC 10-5-16 [14]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

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

Debtors' motion to value the secured claim of CFAM Financial Services, LLC ("Creditor") is accompanied by the Declaration of Elizabeth Rodrigues. Debtors are the owners of a 2010 Toyota Camry ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,342.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The court finds issue with the Debtors' valuation. The motion states that the Vehicle has a valuation of $7,342.00. However, based on the Kelley Blue Book filed as Exhibit A, that valuation is a "private party" value. Dkt. 17. 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 will enter an appropriate minute order.

76.	16-25992-B-13 JPJ-1	EMANUEL/ELIZABETH RODRIGUES Gerald B. Glazer	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-7-16 [19]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 depends on the granting of a motion to value collateral for Santander Consumer USA/CFAM Financial Services, which holds as its collateral a 2010 Toyota Camry. That motion was denied without prejudice at Item #75.

Therefore, the plan filed September 7, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

77. 16-27092-B-13 ROBERT BISHOP
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF VANDERBILT MORTGAGE AND FINANCE, INC.
11-10-16 [10]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

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

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

Debtor's motion to value the secured claim of Vanderbilt Mortgage and Finance, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2002 HBOS Manufacturing, LP 02P483F, mobile home. The Debtor refers to the mobile home as a "vehicle" in the motion but suggests that it is real property in his declaration based on his statement that its valuation is based on "information gained form local [r]ealtors and neighborhood sales." The Debtor seeks to value the mobile home at a replacement value of $30,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Vanderbilt Mortgage and Finance is the claim which may be the subject of the present motion.

Discussion

In order to properly value the mobile home, it must first be determined whether the mobile home is real or personal property. Under the common law of fixtures, property is either real or personal. California Code of Civil Procedure § 657. Real property includes both land and things that are affixed to the land. California Code of Civil Procedure § 658. Manufactured homes are personal property until "affixed" to land. California Code of Civil Procedure § 657, 658, 663. *See Vieira Enterprises, Inc. v. City of East Palo Alto*, 208 Cal. App. 4th 584, 596 (2012). *See also In re Colver*, 13 B.R. 521, 524 (1981).

Bankruptcy courts have considered a number of factors in determining whether a mobile home is real or personal property: (1) whether the mobile home and the lot on which it sits are owned by the same party; (2) whether the mobile home is permanently attached to the land; (3) the method by which the mobile home is attached to the land; (4) the length of time that the mobile home has been attached to the land; (5) the relative ease of moving the mobile home from the land; (6) whether the mobile home can be removed from the land without damaging the land; (7) whether the mobile home is necessary or essential to the real property; and (8) the conduct of the owner and whether it evidences an intent to permanently attach the mobile home to the real property. *Nowlin v. Tammac Fin. Corp. (In re Nowlin)*, 321 B.R. 678, 681 (2005). *See also Jordan v. Greentree Consumer Disc. Co. (In re Jordan)*, 403 B.R. 339, 349-50 (2009).

The Debtor has provided no legal or factual basis for why the mobile home is a

"vehicle." The Debtor also appears to contradict himself by referring to the mobile home as a vehicle in his motion but suggesting that it is real property in his declaration. Noteworthy is that the creditor holding a security interest in the mobile home is a mortgage company named Vanderbilt Mortgage and Finance, Inc. Even more noteworthy is that this mobile home might actually be the Debtor's primary residence located at 3901 Lake Road, Space 50, West Sacramento, California, as listed in the petition and Schedule A. The motion to value is denied without prejudice.

The court will enter an appropriate minute order.

78.	11-49493-B-13 LRR-6	RAQUEL MAURICIO AND AGNES PEREZ Len ReidReynoso	MOTION TO APPROVE LOAN MODIFICATION 10-27-16 [100]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Debtor's Motion to Approve Loan Modification Agreement 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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor") has agreed to a loan modification with respect to the Debtors' first mortgage. Class 4 of the plan filed April 3, 2012, lists the creditor as Wachovia, which merged with Wells Fargo Bank, National Association on May 6, 2011. *See* Claim No. 19-2, p. 13. The loan modification will increase Debtors' mortgage payment from the current $1,576.00 a month to $1,734.31 a month. The increased payment accounts for arrearages currently owed beginning September 1, 2016. However, the Debtors assert that the loan modification will reduce the principal amount to approximately $334,409.02, which they state is a $50,590.98 reduction from the current principal. The interest rate will be fixed at 5.0150%.

The motion is supported by the Declaration of Raquel L. Mauricio and Agnes V. Perez. The Declaration affirms Debtors' desire to obtain the post-petition financing and states that the loan modification is in their best interest in order to remain in their home.

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

The court will enter an appropriate minute order.

79. 13-23493-B-13 MARY JANE BROWN
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
11-10-16 [115]

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Application for Additional Attorney Fees 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter G. Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00. Dkt. 90. Applicant now seeks additional compensation in the amount of $1,245.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 117.

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

The Applicant here does not adequately address the foregoing standard. Applicant states that it was unanticipated that he had to review a total loss report on Debtor's vehicle and prepare and file a motion to approve permanent loan modification on Debtor's primary residence. With regard to the review of the total loss report of the Debtor's vehicle, the Applicant provides no explanation for why this work was in the best interest of the estate and creditors. Additionally, the alleged additional work is not listed chronologically by date, raising uncertainty as to whether these dates are even accurate and whether the work was indeed performed post-confirmation.

Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

80. 16-21793-B-13 ABU ALAMIN
MLF-3 Jessica R. Galletta
Thru #81

MOTION TO MODIFY PLAN
10-18-16 [64]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Modified Plan, the withdrawal being consistent with the opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion is dismissed without prejudice.

The court will enter an appropriate minute order.

81. 16-21793-B-13 ABU ALAMIN
MLF-4 Jessica R. Galletta

MOTION TO APPROVE LOAN MODIFICATION
11-26-16 [75]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Consent to Enter into Loan Modification Agreement 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 permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a trial loan modification which will reduce Debtor's mortgage payment from $1,885.91 a month to $1,254.26 a month. At the end of the trial period, past due payments owed on the mortgage loan will be included in the principal balance of Debtor's mortgage loan. Additionally, at the end of the trial period Wells Fargo will waive all late payments that have accrued on the loan. *See* Doc. 9, Notice of Mortgage Payment Change.

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

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

The court will enter an appropriate minute order.

82. 16-26594-B-13 EULANDA MERRIWEATHER
JPJ-1 Pro Se
Thru #83

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
11-23-16 [38]

DISMISSED 12/01/16

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The case was dismissed on December 1, 2016, for failure to pay fees. The objection is overruled as moot.

The court will enter an appropriate minute order.

83. 16-26594-B-13 EULANDA MERRIWEATHER
JPJ-2 Pro Se

MOTION TO DISMISS CASE
11-23-16 [41]

DISMISSED 12/01/16

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The case was dismissed on December 1, 2016, for failure to pay fees. The motion is denied as moot.

The court will enter an appropriate minute order.

84. 15-20996-B-13 WARREN DITTMAR — CONTINUED MOTION TO DISMISS CASE
JPJ-1 W. Scott de Bie — 10-26-16 [57]
Thru #85

Tentative Ruling: This matter was continued from November 29, 2016, to be heard in conjunction with the motion to modify plan at Item #85. The Trustee's Motion to Dismiss Case was originally 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 matter will be determined at the scheduled hearing.

85. 15-20996-B-13 WARREN DITTMAR — MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie — 11-3-16 [62]

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

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

The plan payment in the amount of $890.00 does not equal the aggregate of the Trustee's fees and monthly dividends payable on Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $918.00. The plan does not comply with Section 4.02 of the mandatory form plan.

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

The court will enter an appropriate minute order.

86. 16-24996-B-13 VONETTA BENOIT
MB-1 Michael Benavides

MOTION TO CONFIRM PLAN
11-1-16 [31]

Thru #87

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

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

The plan payment in the amount of $1,505.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,607.00. The plan does not comply with Section 4.02 of the mandatory form plan.

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

The court will enter an appropriate minute order.

87. 16-24996-B-13 VONETTA BENOIT
MB-1 Michael Benavides

COUNTER MOTION TO DISMISS CASE
11-29-16 [41]

Tentative Ruling: The motion will be conditionally denied.

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

The court will enter an appropriate minute order.

88.	16-26597-B-13 JPJ-1	FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-8-16 [29]

CONTINUED TO 1/31/17 AT 1:00 P.M. TO BE HEARD AFTER EVIDENTIARY HEARING ON MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. SET FOR 1/30/17.

Final Ruling: No appearance at the December 13, 2016, hearing is required.

The court will enter an appropriate minute order.

89. 16-23799-B-13 MELISSA REGALA
WW-1 Mark A. Wolff
Thru #90

CONTINUED COUNTER MOTION TO DISMISS CASE
10-5-16 [53]

Tentative Ruling: This matter was continued from November 1, 2016, to be heard in conjunction with the continued motion to confirm plan. The continued counter motion to dismiss is denied as moot for reasons stated at Item #90.

The court will enter an appropriate minute order.

90. 16-23799-B-13 MELISSA REGALA
WW-1 Mark A. Wolff

CONTINUED MOTION TO CONFIRM PLAN
9-20-16 [42]

Tentative Ruling: The Motion to Confirm the Amended Plan was originally 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 has been filed by the Chapter 13 Trustee, U.S. Bank, N.A., and Jeanny Leung and Douglas Leung. Supplemental responses have been filed by the Debtor, U.S. Bank, N.A., and the Leungs.

The court's decision is to deny the motion to confirm as moot and overrule objections to confirmation as moot based on the court's dismissal of this case.

Presently before the court is a motion by debtor Melissa Regala ("Debtor") to confirm her first amended Chapter 13 plan filed on September 20, 2016. There are also a number of oppositions to the motion to confirm, objections to confirmation of the amended plan, and motions to dismiss filed by the Chapter 13 Trustee ("Trustee") and creditors U.S. Bank, N.A. and Jeanny Leung and Douglas Leung ("Leungs"). The court has reviewed and takes judicial notice of the entire docket in this Chapter 13 case paying particular attention to the oppositions, objections, and motions to dismiss filed under docket control number "WW-1."

This matter was continued from November 1, 2016, to permit supplemental briefing by all parties. Supplemental briefing by the Debtor was due by November 15, 2016, Creditors' supplemental briefing in response was due by November 29, 2016, and any reply by the Debtors was due by December 6, 2016. The Debtor filed supplemental briefing on November 11, 2016 (dkt. 81), U.S. BANK on November 21, 2016, (dkt. 86), and the Leungs on November 29, 2016 (dkt. 88). No reply appears to have been filed by the Debtor by December 6, 2016.

The court's focus is on the Debtor's eligibility to be a Chapter 13 debtor because that determination moots all other objections, oppositions, and motion(s) to dismiss brought on other grounds. For the reasons explained below, the court's decision is to dismiss this case on the basis that the Debtor is not eligible under 11 U.S.C. § 109(e) to be a Chapter 13 debtor.

Discussion

Chapter 13 eligibility is determined by the amount of debt held by a debtor at the commencement of the bankruptcy case. Only an individual that owes on the petition date noncontingent, liquidated, unsecured debts of less than $394,725.00 may be a Chapter 13 debtor. *See* 11 U.S.C. §109(e).

Extensive inquiries and evidentiary hearings need not dominate in the eligibility determination analysis. *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006). Chapter 13 eligibility is normally determined as of the petition date by a review of a debtor's originally filed schedules. *Scovis v. Henrichsen (In re*

Scovis), 249 F.3d 975, 982 (9th Cir. 2001). However, if a bad-faith objection is raised by a party in interest, the bankruptcy court should look past the schedules so long as the debt computation for eligibility is determined as of the petition date. *Guastella*, 341 B.R. at 918. Eligibility debt limits are strictly construed. *Soderlund v. Cohen (In re Soderlund)*, 236 B.R. 271, 274 (9th Cir. BAP 1999).

The petition date here is June 13, 2016, which means it is the debt that existed **on that date** that determines whether the Debtor is eligible under § 109(e) to be a Chapter 13 debtor. Based on the amount of unsecured debt that existed on the petition date, and because the amount of that debt exceeds the § 109(e) statutory cap, the court concludes that the Debtor is ineligible to be a Chapter 13 debtor.

Initially, the court notes that although it is not ruling on the issue of good faith, in addition to moving to dismiss this case, the Leungs have filed a good faith objection to confirmation. The Leungs' objection is based on the Debtor's schedules and refers to unsecured debt the Debtor omitted from and/or misstated in her schedules filed with the petition. Therefore, in making the § 109(e) eligibility determination, the court will look beyond the Debtor's schedules. *See In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016) (looking beyond schedules to determine eligibility based on bad faith objection to confirmation).

The significant (and fatal) problem with the Debtor's eligibility in this case relates to an unsecured debt the Debtor owed the Leungs on the petition date. That debt is based on and arises from the Debtor's default under a pre-petition promissory note and settlement agreement between the Debtor and the Leungs which provide that in the event the Debtor defaults she is liable to the Leungs for substantial damages. The Debtor defaulted in January 2016 and, as of January 2016, the Leungs have calculated the resulting damages to be $438,029.00.

The court recognizes the foregoing damages include lease damages. However, those damages are not subject to any § 502(b)(6) cap and are still counted in the chapter 13 eligibility determination because they existed on the petition date notwithstanding they may thereafter at some point in the case be limited or reduced. *See In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010). *Mohr* is consistent with *Scovis* and *Guastella* both of which require a determination of Chapter 13 eligibility based on the amount of debt that exists on the petition date and not at some post-petition point thereafter. In other words, its what the debtor owes when the petition is filed not how the debtor can reduce, manage, or deal with that debt subsequently in the Chapter 13 case that determines eligibility.

The unsecured debt of at least $438,029.00 the Debtor owed the Leungs on the petition date is also noncontingent and liquidated. Notably, the boxes marked "contingent" and "unliquidated" on Schedule F are not checked. Some courts recognize that "[s]tatements in bankruptcy schedules are executed under penalty of perjury and when offered against a debtor are eligible for treatment as judicial admissions." *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah) (quoting *In re Bohrer*, 266 B.R. 200, 201 (Bankr. N.D. Cal. 2001)). Other courts treat statements in schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2)(A). *In re Heath*, 331 B.R. 424, 431 (9th Cir. BAP 2005) (citation omitted); *see also In re Vee Vinhee*, 336 B.R. 437, 449 (9th Cir. BAP 2005); *In re Applin*, 108 B.R. 253, 259 (Bankr. E.D. Cal. 1989). The Ninth Circuit has not squarely addressed the issue. However, in *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960 (9th Cir. 2012), the Ninth Circuit opined that bankruptcy schedules were evidence admissible in statutory PACA claims over liability. Consistent with the Ninth Circuit's opinion in *Perfectly Fresh Farms* and this court's opinion in *Applin*, this court views, and therefore in this case will treat, the Debtor's Schedule F as an evidentiary admission by the Debtor under Federal Rule of Evidence 801(d)(2)(A) that her debt to the Leungs is noncontingent and liquidated.[1]

[1]The box "disputed" is also not marked. However, even if it was, disputed debts are not excluded from the eligibility determination. *See Sylvester v. Dow Jones & Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (9th Cir. BAP 1982); *see also Nicholes v. Johnny Appleseed of Wash. (In re*

In sum, the court is persuaded that as a result of the unsecured debt owed to the Leungs the Debtor's unsecured noncontingent, liquidated debt on the petition was at least $438,029.00. That debt alone exceeds the $394,725.00 statutory cap under § 109(e) which means the Debtor is, as a matter of law, ineligible to be a chapter 13 debtor.

Therefore, for the foregoing reasons, the court will order this case dismissed, the Debtor's motion to confirm and confirmation of the Debtor's plan denied as moot, all objections to confirmation of the Debtor's plan overruled as moot, and the Trustee's countermotion to dismiss also denied as moot.

The court will enter an appropriate minute order.

Nicholes), 184 B.R. 82, 90-91 (9th Cir. BAP 1995).

91.	13-24213-B-13 CYB-1	KAWATHA GETER AND LATANAYA JOHNSON-GETER Candace Y. Brooks	MOTION TO INCUR DEBT O.S.T. 12-5-16 [48]

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

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase real property commonly known as 2335 Chuck Yeager Circle, Sacramento, California the total purchase price of which is $361,155.00. The Debtors have been pre-approved for a loan in the amount of $388,628.00. The mortgage on the loan is a 30-year fixed rate loan with interest at 4%. Principal, interest, and mortgage insurance payment will total $2,220.00. The Declaration of Kawatha Geter and Latanaya Johnson-Geter have been filed in support of the motion.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.